

SHEET NO. 66  
Effective \_\_\_\_\_, 2003

SCHEDULE CHP

CUSTOMER-SITED UTILITY-OWNED COGENERATION SERVICE

AVAILABILITY:

Applicable to customers who have a sustained minimum electric power load of 250 kW, and a thermal energy requirement of not less than 12 therms/hour, and who meet the requirements for service under this Schedule as provided in the Terms and Conditions provided below. The Customer-sited Combined Heat and Power ("CHP") System provided under this Schedule will be designed to supply a portion of the customer's electricity and thermal energy requirements. The Company will continue to serve the customer's supplemental electricity power requirement from the Company's system. Customers requesting service under this Schedule shall execute a Combined Heat and Power Agreement ("CHP Agreement") subject to the terms and conditions set forth below.

RATES:

All rates and provisions of the otherwise applicable rate schedule shall apply except as modified below:

Energy Rate Discount:

The Schedule CHP customer's monthly bill shall be reduced by the following energy rate discount applied to the total kWh supplied from the Customer-sited CHP System:

All kWh from Customer-sited CHP System - per kWh -1.0¢/kWh

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Annual Minimum Electric Discount:

The customer will receive an annual cumulative electricity discount at a guaranteed minimum level based upon an assumed CHP System annual equivalent availability rate of 85%. The guaranteed minimum discount per Contract Year will be equal to the following:

$$\text{Minimum Discount} = [((A \times 85\%) \times (8760 - B)) \times C]$$

Where:

- A = the net capacity of the CHP System generating units in KW specified in Appendix A of the CHP Agreement;
- B = number of hours during the year in which the customer does not take at least 75% of the available CHP System electric output.
- C = the energy rate discount in ¢/kWh noted above;

If the customer's total actual electricity discount for any Contract Year (as shown on the Company's bills to the customer) does not equal the Minimum Discount for that Contract Year as calculated above, then the customer will be credited with the difference on the billing for the first billing period in the following year.

Facilities Charge:

The following Facilities Charge shall apply to Schedule CHP customers with absorption chillers and cooling towers installed and owned by the utility. These charges will be escalated at the compound rate of 3% per year effective January 1 of each year beginning in 2004, to account for the expected increases in the equipment costs.

Chiller Size:

50 Tons Absorption Chiller	\$560 per month
60 Tons Absorption Chiller	\$680 per month
70 Tons Absorption Chiller	\$720 per month
85 Tons Absorption Chiller	\$795 per month
115 Tons Absorption Chiller	\$950 per month

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Facilities Charge - continued:

Chiller Size:

150 Tons Absorption Chiller	\$1,130 per month
240 Tons Absorption Chiller	\$1,480 per month
300 Tons Absorption Chiller	\$1,770 per month
350 Tons Absorption Chiller	\$1,970 per month
500 Tons Absorption Chiller	\$3,150 per month

Thermal Charge:

Schedule CHP customers shall be charged the thermal charge specified in the customer's CHP Agreement. The base thermal charge shall be 40 cents per therm. The contract thermal charge may vary by +/- 50% of the base thermal charge depending upon the characteristics of the particular installation. The thermal charge is intended to be the means to deal with project cost differences that derive from the nature of the site available for the installation. If the site enables the installation of a pre-packaged, skid-mounted CHP system, the thermal charge can be lower and still yield an adequate return for the Company and an appropriate level of savings for the customer. If the site requires that the various components of the Customer-sited CHP System be field-installed and interconnected, the thermal charge may be higher to cover the extra cost. Ultimately, the thermal charge rate will be a negotiated value in each case as it is not only the means to deal with project cost differences, but it is also the means to deal with competitive situations.

Schedule CHP customers will be required to accept the minimum amount of available cogeneration thermal output (therms per month) of the Customer-sited CHP System specified in the customer's CHP Agreement, provided that the CHP System is operable and capable of producing the output necessary to supply the minimum thermal output.

The Thermal Charge shall be adjusted on June 30 of each Contract Year based on the percentage change from the previous

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Thermal Charge - continued:

year's Gross Domestic Product Implicit Price Deflator ("GDPIPD"). The percentage change in GDPIPD will be measured from a base of 110.66 for the year 2002 (1996=100) to the reported final value for the year in which the adjustment is made.

Termination Charge:

A Termination Charge may be assessed as specified in the CHP Agreement.

EFFECTIVE DATE OF CHP AGREEMENT:

Following execution of a CHP Agreement with a customer, the Company will file a forty five (45) day notice transmittal with the Commission specifying the customer, the estimated capital costs for the Customer's CHP system, the rate components, and the effective date of the CHP Agreement, together with the CHP Agreement. The effective date of the CHP Agreement must be at least forty-five (45) days after the filing of the fortyfive-day file and suspend CHP system notice transmittal. The fortyfive-day file and suspend CHP system notice transmittal shall have attached to it a certificate of service showing service, at the time of filing, on the Division of Consumer Advocacy of the Department of Commerce and Consumer Affairs of the State of Hawaii (the "Consumer Advocate"). The forty five-day notice file and suspend notice transmittal shall be kept open for public inspection (except that the thermal charge and customer information deemed to be confidential and proprietary will be deleted and filed pursuant to a Protective Order issued by the Commission).

The effective date of the CHP Agreement will be the first day of the month following the expiration of the notice period (of at least 45 days), unless the Commission issues an order suspending the effective date of the CHP Agreement within the notice period.

If the Commission issues an order suspending the effective date of the CHP Agreement, the CHP Agreement will not be effective until the first day of the month following the Commission's issuance of an order allowing the CHP Agreement to take effect.

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Schedule CHP - Continued

Effective Date of CHP Agreement - continued:

If the Commission issues an order suspending the effective date of the CHP Agreement, and the effective date of the CHP Agreement is delayed by more than forty five (45) days as a result of the suspension order, then either the customer or the Company may terminate the CHP Agreement by providing written notice of such termination prior to the effective date of the CHP Agreement.

If the Commission conditions its order allowing the CHP Agreement to take effect upon the Company and the customer agreeing to modifications to the CHP Agreement, the Company and the customer must execute a conforming amendment to the CHP Agreement with the required modifications within forty five (45) days of the issuance of the order (unless such period is extended by mutual written agreement), and the CHP Agreement will not be effective until the first day of the month following execution and filing with the Commission of the conforming amendment; provided that if the customer or the Company elects not to execute such a conforming amendment within such forty five-day period, as extended, then the CHP Agreement is terminated.

TERMS AND CONDITIONS:

1. The Company shall have the sole and exclusive discretion to determine a customer's eligibility for service under this Schedule. The Company's Eligibility Criteria for participation in this Schedule are attached as Attachment I.

The customer must provide the Company with information on its total energy costs (electricity power and thermal energy costs) for the past 24 months including sufficient supporting information such as fuel bills, records of its fuel requirements and consumption. The customer shall provide the Company with additional information as may be required by the Company to determine the customer's eligibility for service under this Schedule, including operation characteristics and future business plans that may impact its future energy requirements and energy costs.

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Schedule CHP - Continued

TERMS AND CONDITIONS - continued:

2. Upon a customer's acceptance of a conceptual proposal for a CHP facility located on that customer's site, the Company shall require that the customer enter into a letter of intent to continue the pursuit of the development of a CHP system. The letter of intent will provide that the customer shall reimburse the Company for its engineering expenses up to a specified amount if the final design of the system achieves approximately the same level of economic benefits as the conceptual proposal and the customer decides to not move forward with the project. If the final design does not achieve the same level of benefits and the customer declines to continue with the development of the project or the Company declines to continue with the development of a CHP project, the Company shall be responsible for those engineering costs. If both parties agree to continue with the project, the engineering costs will be folded into the total project costs.
3. Customers applying for service under this Schedule shall sign a standard CHP Agreement as provided in Attachment II to this Schedule, subject to the terms and conditions set forth in this Schedule.
4. The Company shall be the sole supplier of the customer's total electric energy requirements during the CHP Agreement term, other than energy from a non-fossil fuel energy source or from customer's own emergency generator when operated during emergency periods, or for limited test periods, or at the Company's request.

Customers applying for service under this Schedule must have a minimum sustained electric power load of 250 kW and a minimum thermal energy requirement of 12 therms per hour.

5. The Company will, at its expense, design, construct, install, own, maintain, and operate a CHP system and all necessary appurtenances on the customer's site (Customer-sited CHP System), including the interconnection with the Company's electric system in accordance with the Company's Rule 14H.

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Schedule CHP - Continued

TERMS AND CONDITIONS - continued:

The Company will, at its expense, obtain all the necessary permits where required, for the installation and operation of the Customer-sited CHP System.

6. The Company will, at its expense, design, construct, install, own, maintain, and operate a Customer-sited CHP System-integrated absorption chiller and other heat recovery equipment, when requested or required by the customer. Customers requesting and requiring a Customer-sited CHP System-integrated absorption chiller and/or other heat recovery equipment will be charged the monthly Facilities Charge provided above, to recover the Company's associated costs.
7. The Customer-sited CHP System provided under this Schedule will be designed to supply a portion of the customer's electricity and thermal energy requirements. The Company will continue to serve the customer's supplemental electricity power requirement from the Company's system as well as their full demand when the Customer-sited CHP System is off-line. A customer shall, at its expense, own, operate, and maintain an alternate thermal energy source for its heating and/or cooling load for use as back-up when the Customer-sited CHP System is unavailable for any reason including during maintenance and unscheduled outages, as well as to supply the customer's supplemental thermal energy requirements.

For customers with existing electric service with the Company prior to service under this Schedule, they will continue to be billed and served at the existing meter under the applicable rate schedule except as modified under this Schedule. In addition, the Company will, at its expense, install meter(s) on the Customer-sited CHP System to meter the kWh output eligible for the energy rate discount provided above.

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Schedule CHP - Continued

TERMS AND CONDITIONS - continued:

For customers without existing electric service with the Company prior to service under this Schedule, the Company shall install the required meters for billing purposes under this Schedule and the applicable rate schedule.

The customer's monthly bill shall be based on the total energy power supplied from the Company's system and from the Customer-sited CHP System.

8. The Company will, at its expense, install, own, operate, and maintain the BTU meter(s) including all necessary appurtenances, to meter the thermal energy supplied from the Customer-sited CHP System for billing purposes. However, the Company may use an estimate of monthly thermal energy consumption and reconciled at intervals not exceeding 3 months. The customer shall be charged the Thermal Charge specified in the customer's CHP Agreement.
9. The customer shall, at its expense, provide the Company with suitable and adequate site on its premises that is acceptable to, and approved by the Company for the construction and operation of the Customer-sited CHP System and all the required appurtenances including a Customer-sited CHP System-integrated absorption chiller or other heat recovery equipment requested and required by the customer. The customer shall, at its expense, ensure that the site meets all Federal, State, and County environmental codes and standards, as to be permittable at a reasonable cost to the Company for the installation and operation of the Customer-sited CHP System. The customer and Company's responsibilities regarding hazardous substances in the site, pre-existing or found during or after construction or in the course of the Company's operation and maintenance of the Customer-sited CHP System, shall be as specified in the CHP Agreement. The customer shall grant the Company a 24-hour access to the site throughout the year, during the CHP Agreement term, and the Company must be able to limit access to the CHP plant to authorized utility or customer personnel.

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Schedule CHP - Continued

TERMS AND CONDITIONS - continued:

10. If diesel is the chosen fuel for the site, the customer shall allow the Company a shared-use of its existing fuel tank(s), if any, for the Customer-sited CHP System's fuel storage at no cost to the Company. The customer shall ensure that the fuel tanks meet all regulatory requirements and standards. The customer shall continue to own such existing fuel tanks used by the Company, and the Company, at its expense, will operate and maintain such fuel tanks in accordance with the CHP Agreement.

If there are no existing customer-owned fuel tanks or the existing tanks are not acceptable to the Company, the Company will, at its expense, design, construct, install, own, maintain, and operate the fuel tank(s) necessary for the Customer-sited CHP System's fuel storage. The customer shall provide a suitable and adequate site in its premises, acceptable and approved by the Company, for the installation and operation of the Company's fuel tanks, at no cost to the Company. The customer shall grant the Company a 24-hour access to the site throughout the term of the CHP Agreement.

The Company will, at its expense, purchase the fuel necessary to operate the Customer-sited CHP System. The customer will normally procure its own fuel supply for its back-up thermal energy system for its cooling and/or heating loads. When using the customer's existing fuel tank(s), the Company will, at its expense, install meters to meter the fuel used by the Customer-sited CHP System as well as the fuel used by the customer for its back-up thermal energy system for its cooling or heating. If the customer uses more fuel than its available fuel supply, the Customer shall reimburse the Company for the cost of fuel provided by the Company, based on the actual total cost of such fuel, including taxes.

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Schedule CHP - Continued

TERMS AND CONDITIONS - continued:

11. Customer-sited CHP System installation at the site must be able to comply with the interconnection standards in the Company's Rule 14H at reasonable cost. If the customer requires or desires islanding of the Customer-sited CHP System, the customer must make a non-refundable contribution of the incremental cost that will be incurred by the Company to provide that capability.
12. The customer's CHP Agreement shall specify the rated capacity of the Customer-sited CHP System being installed and owned by the Company, provide a description of the Customer-sited CHP System including its expected availability factor and other operating information, and all other terms and conditions deemed necessary by the Company to serve the customer under this Schedule.
13. Customer information shall be treated as confidential to the extent that the Company and the customer identify it as confidential or proprietary, subject to Commission issuance of a protective order.
14. The term of the CHP Agreement is 20 years.
15. The CHP Agreement provides for the termination by the Company or the customer under specified conditions and the detailed terms and conditions related to the various termination scenarios.

Energy Cost Adjustment:

The energy cost adjustment provided in the Energy Cost Adjustment Clause shall be added to the customer's monthly bill.

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Schedule CHP - Continued

Integrated Resource Planning Cost Recovery Provision:

The Integrated Resource Planning Cost Recovery surcharge shall be added to the customer's monthly bill.

RULES AND REGULATIONS:

Service supplied under this Schedule shall be subject to the Rules of the Company.

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ATTACHMENT I

Schedule CHP Eligibility Criteria

1. Customer must have a minimum sustained electric load of 250 KW.
2. Customer must have a minimum sustained heat load of 12 therms/hour. The customer's heat load requirement may be partially met by absorption chilling.
3. An environmentally clean site, for which permits necessary for the installation and operation of the CHP plant can be obtained at reasonable cost, must be available to the Company at no cost.
4. The site must be accessible to the Company on a 24 hour-per-day basis, 7 days per week for operating and maintenance purposes, and the Company must be able to limit access to the CHP plant to authorized persons.
5. Reasonably accessible locations must be available within the site for the required equipment, including standard CHP plant packages used by the Company, cooling tower(s) if required, and fuel storage.
6. Customer must be willing and able to pay via a facilities charge for the non-generation equipment needed to utilize the waste heat, or needed to provide a fully integrated system such as chillers, heat exchangers, pumps etc.
7. Appropriate customer-owned and operated electrical equipment, chillers and a back-up heat source must be available for peaking and CHP plant outage coverage if required by customer to maintain their operations.
8. Customer must be up to date on electricity billing and no late payment of bills over past 24 months.
9. Customer must control an existing facility or be able to clearly demonstrate an ability to complete a project under development.
10. Customer must have requisite authority to provide site and enter into the 20-year CHP Agreement.
11. CHP plant installation at the site must be able to comply with interconnection standards in Rule 14H at reasonable cost. Customer must be willing to pay for incremental costs if the customer requires or desires islanding of the CHP unit(s).

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ATTACHMENT I - Continued

12. Customer must be willing and able to comply with the terms and conditions of the CHP Agreement.
13. The Company is not required to serve a customer under this rate schedule if, in the Company's judgment, the lower rates provided would not achieve the rate schedule's intended purpose and would not benefit the Company's customers as a whole. The Customer may be required to provide business operation information that is relevant to establishing its eligibility to receive service under this rate schedule. The Customer shall be responsible for demonstrating the credibility of the business operation information provided.

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**Combined Heat and Power Agreement****Section 1. Parties and Effective Date****1.1 Parties to Agreement:**

This Combined Heat and Power Agreement ("Agreement") is entered into between (i) \_\_\_\_\_ ("Host"), located at \_\_\_\_\_ and (ii) **Hawaiian Electric Company, Inc.**, ("HECO") located at 900 Richards Street, Honolulu, Hawaii 96813. Host and HECO are sometimes referred to hereinafter, respectively, as "Party" and, collectively, as the "Parties."

**1.2 Effective Date:**

This Agreement will be filed with the State of Hawaii Public Utilities Commission ("PUC") upon execution. The Effective Date of this Agreement will be the date when HECO receives a decision and order from the PUC approving the Agreement, electric tariff discount and recovery of waste heat equipment costs through the facility fee and thermal fee, a related fuel supply contract authorizing the full recovery of the CHP Cogeneration System fuel costs and related taxes through HECO's Energy Cost Adjustment Clause.

If HECO has not received such decision and order from the PUC within sixty (60) days of the date of the last signature to this Agreement, then either the Host or HECO may terminate this Agreement by providing written notice of such termination delivered to the other prior to the Effective Date. The "Contract Year" shall be defined as the twelve-month period starting with the first full month following the Effective Date of this Agreement.

**Section 2. Recitals****2.1 Recital 1:**

Host is the owner and operator of \_\_\_\_\_ located at \_\_\_\_\_ ("Facility"). Host desires to purchase from HECO all of its electricity and a portion of its thermal energy in order to provide electrical and thermal service to the Facility, to decrease its energy costs and to improve the reliability of a portion of the Facility.

**2.2 Recital 2:**

HECO desires to offer its customers Combined Heat and Power ("CHP") systems to respond to customer demand and to increase customers' energy alternatives. CHP systems can help reduce a customer's total energy consumption and costs. Use of distributed generation resources such as CHP should benefit HECO by extending the life of its transmission and distribution systems, as well as by the incremental addition of generating capacity created by CHPs.

**2.3 Recital 3:**

HECO desires to design, construct, install, own, maintain, and operate a CHP cogeneration system ("System") at the Facility for the production of electricity and thermal energy.

### **Section 3. HECO Commitments**

#### **3.1 Needs Assessment:**

HECO has conducted an analysis of electricity and fuel use at the Facility to determine the amount of electrical and the amount of thermal energy (derived from waste heat generated from the CHP unit(s)) needed by the Facility.

#### **3.2 Permits and Approvals:**

From the Effective Date, HECO will exercise due diligence to obtain, at its expense, the building permit and fuel supply for the System, as applicable, and all other governmental and non-governmental agencies as are necessary for the installation and operation of the System, as set forth on Schedule 1-A, and to maintain such approvals throughout the term of this Agreement ("Permits"). If all Permits necessary to install the System are not obtained within one (1) year of the Effective Date of this Agreement, then either party may terminate this Agreement on written notice to the other party delivered before such Permits are obtained, and thereafter, the parties will have no further liability or responsibility to the other.

#### **3.3 Design, Construction and Installation of the System:**

HECO will, at its expense, design, construct, install, own, operate and maintain the System at the Facility. A description of the System is attached as Appendix A. HECO and Host have agreed to a preliminary conceptual design of the System. In accordance with the schedule set forth in Schedule 1-A, attached hereto, HECO will provide to Host more detailed System installation plans and specifications. Host and HECO agree to work together to further define the System installation plans and specifications. HECO's right to install and construct the System and Host's obligation to purchase and pay for energy from the System are conditioned upon Host's approval of the final plans and specifications, which approval shall not unreasonably be withheld by Host. HECO will design the System to operate with minimal or no adverse impacts on Host's and Host's customers' or business guests' use of the Facility.

Host acknowledges that HECO's obligation to construct and operate the System is subject to certain construction, financial and other assumptions and contingencies noted herein and in Appendix E, attached. If such assumptions are revealed to be inaccurate, regardless of fault by either party, or such contingencies are not met or satisfied, the parties agree in good faith to attempt to negotiate amendments or modifications to this Agreement to address the changed circumstances due to the inaccurate assumptions or unsatisfied contingencies. If the parties cannot mutually agree upon such amendments or modifications, then either party may terminate the Agreement upon ten (10) days prior written notice to the other and, absent fraud or other tortious conduct by the non-terminating party, each party shall bear its own costs incurred before termination.

To the extent reasonably possible, HECO will perform construction activities to minimize interference with use of the Facility by Host and its customers or business guests. Host acknowledges, however, that construction activities, by their nature, may involve noise and/or dust during Host's regular business hours. HECO will provide and install a sound attenuation cabinet and foundation capable of adequately supporting the operation of the System in accordance with all applicable regulations and codes. Upon completion of construction, and completion of commissioning and break-in periods, HECO will notify Host in writing that Commercial Operation has commenced, and that the System has been constructed in accordance with all permits.

If diesel is the chosen fuel for the site, the Host shall allow HECO, a shared-use of its existing fuel tank(s), if any, for the CHP System's fuel storage at no cost to HECO. The Host shall ensure that

the fuel tanks meet all regulatory requirements and standards. The HOST shall continue to own such existing fuel tanks used by HECO, and HECO will, at its expense, operate and maintain such fuel tanks in accordance with this Agreement. If the Host has no existing fuel tanks or the existing tanks are not acceptable to HECO, HECO will, at its expense, design, construct, install, own, maintain, and operate the fuel tank(s) necessary for the CHP System's fuel storage. The Host shall provide a suitable and adequate site in its premises, acceptable and approved by HECO, for the installation and operation of the HECO's fuel tanks, at no cost to HECO. The Host shall grant HECO a 24-hour access to the site throughout the term of the CHP Agreement.

### **3.4 Maintenance of the System**

HECO will, at its expense, perform all routine and emergency repairs, maintenance, and operation of the System. HECO will provide at its expense, all labor, material, and other supplies necessary to perform such maintenance, repair and operation, including component or System replacement as necessary in HECO's reasonable discretion. In the event of a partial or complete failure of the System, HECO will respond as soon as possible following written or telephone notification from Host, and will effect such repairs as soon as reasonably possible to restore the System. HECO shall perform all maintenance activities so as not to unreasonably interfere with use of the Facility by Host and its customers or business guests. HECO shall design the System to insure that, in the event of any System failure, Host's electric system can automatically access power made available from the HECO grid. Host, at its own expense, shall at all times maintain backup heating and cooling sources sufficient to operate the Facility without the System.

HECO shall comply with all applicable laws with respect to the handling, removal and proper disposal of any Hazardous Substances, as defined by HRS 128D-1, brought onto, or released, spilled or disposed of at the Facility by HECO or its subcontractors. HECO shall not be liable or responsible for any pre-existing Hazardous Substances at the Facility, including the agreed-upon site for the System.

### **3.5 Fuel Purchase for System:**

HECO will, at its expense, purchase the fuel necessary to operate the CHP System. The Host will normally procure its own fuel supply for its back-up thermal energy system for its cooling and/or heating loads. When using the Host's existing fuel tank(s), HECO will, at its expense, install meters to meter the fuel used by the CHP System as well as the fuel used by the Host for its back-up thermal energy system for its cooling or heating. In such circumstances, the Host shall reimburse HECO for the total actual cost of such fuel provided by HECO, including taxes.

### **3.6 Billing and Reporting:**

HECO will furnish to Host monthly statements showing the amount of electrical and thermal energy produced by the System that is consumed by the Facility and the total charges. Cogeneration energy bills will be in a form similar to the example attached as Appendix D. HECO will invoice Host on a monthly basis.

### **3.7 Work Performed:**

HECO will be solely responsible for maintenance, operation and repair work performed on the System by HECO and HECO's agents, contractors and subcontractors. Except to the extent permitted by HECO in writing, neither Host nor its employees, agents or contractors shall perform any such work on the System. HECO will not be responsible for any loss, damage, cost or expense arising out of or resulting from unauthorized work. HECO warrants that it will own the System free of all mechanics' liens.

### **3.8 Compliance with Laws**

HECO, at all times, shall observe and comply with all applicable laws, regulations, governmental rules, orders and ordinances applicable to the performance of its obligations under this Agreement.

## **Section 4. Host Commitments**

### **4.1 Accuracy of Information:**

HECO has relied and is entitled and will continue to rely on the accuracy of all information provided by Host pertaining to the Facility's physical configuration and operations ("Host Provided Information"). If HECO's ability to install, maintain or operate the System as agreed herein and in the final plans and specifications is materially impaired as a result of inaccurate Host Provided Information, regardless of fault on Host's part, then HECO shall be entitled, at its election, to either (1) equitably adjust the thermal energy pricing agreed upon herein to reflect increased maintenance or operation burdens on HECO, (2) equitably adjust schedules and/or other terms of this Agreement affected by the inaccurate Host Provided Information; or (3) terminate the Agreement as provided in section 3.3 above if Host and HECO cannot agree upon such equitable adjustment(s).

### **4.2 Provision of Site:**

A mechanical single line plan for the System based on conceptual design is attached as Appendix A hereto. Host shall provide space acceptable to HECO for installation of the System at the Facility. Such space (the "Site") shall be provided at no cost to HECO for the duration of the term of this Agreement and HECO is hereby granted a license for use and access to the Site as contemplated by this Agreement. If the parties cannot mutually agree upon an acceptable Site for the System or any of its material components within a reasonable time, this Agreement may be terminated by either party upon written notice to the other, and thereafter, the parties will have no further liability or responsibility to the other.

HECO shall not be obligated to accept any Site containing any hazardous substances, hazardous waste or the like as defined by or as may be defined by any applicable federal, state or local law or regulation. HECO shall have the right, but not the obligation, to perform environmental assessments, including surface and subsurface sampling, of the Site.

HECO shall not be liable or responsible for any contamination or hazardous substances existing at the Site prior to HECO's construction and operation of the System at the Site ("pre-existing contamination"). HECO shall provide written notice to Host immediately upon the discovery of any pre-existing contamination. Except in case of emergency, neither HECO nor its subcontractors will disturb, disrupt, remove, alter, dislodge or otherwise handle any pre-existing contamination at the Site without the prior written consent of Host. HECO may suspend work until Host adequately removes or otherwise addresses the pre-existing contamination to HECO's reasonable satisfaction and in a manner acceptable to all governmental or regulatory agencies with jurisdiction over the matter, including the State of Hawaii Department of Health and the United States Environmental Protection Agency. If HECO incurs additional mobilization or demobilization costs as a result, Host shall pay or reimburse HECO for such costs. If the discovery and presence of pre-existing contamination precludes installation of the System, then either party may, on written notice to the other, terminate this Agreement. Upon such termination, Host will reimburse HECO for all reasonable costs incurred prior to termination.

HECO shall insure that the location of the Site for the System will be permissible under all applicable federal, state and local statutes, ordinances and codes.

#### **4.3 Cooperation on Permits and Approvals**

Host shall timely cooperate with HECO's efforts to obtain all permits and approvals required under section 3.2 above or elsewhere in this Agreement, and shall cooperate with all reasonable requests by HECO related thereto.

#### **4.4 Facility Ownership:**

Host warrants that it has the full authority, including necessary consents, if any, from any mortgagees, lien holders, lessors or lessees, to permit HECO to install and operate the System at the Facility for the term of this Agreement and subject to the terms and conditions of this Agreement.

#### **4.5 Access:**

Host will at all times provide safe and reasonable access to the Facility and Site as necessary for HECO to construct, install, operate and maintain the System and its components. Thermal energy and electrical power output will be transmitted from the System, and necessary lines connecting the System with Host's pre-existing conventional electrical and heating/cooling systems will be run in, under, over, across, and through the Facility. Host will compensate HECO for actual costs and expenses incurred (at HECO's then standard rates for HECO's employees or subcontracted maintenance personnel performing work on Systems in the same geographic area) due to any delays or additional work that becomes necessary because of inadequate access to the Facility, Site or work area. HECO shall have the obligation to notify Host if access for such purposes is inadequate. HECO will have the right to suspend work if there is inadequate access until such time as necessary access is provided. In such event, HECO will notify Host of the particular condition or situation affecting access, and when Host corrects the condition or situation, HECO will resume work as soon as practicable. Host will be responsible to HECO for all additional mobilization and demobilization costs associated therewith.

#### **4.6 Maintenance of Facility:**

Host will, at its expense, maintain the Facility and pay all utilities, taxes, and bills associated with the Facility and the Site, excluding the System. Host is fully responsible for the upkeep and maintenance of all of Host's equipment that will utilize the System's outputs, such as, but not limited to, hot water, process heat, space heating, and absorption air conditioning. Host will properly maintain in full working order all of Host's equipment that Host may shut down while utilizing the System, including but not limited to back-up generators, independent air conditioning or heating units and hot water heaters. Host shall also provide a data link.

In the event of damage to the System that is caused by Host or those for whom Host is legally responsible, Host agrees to pay all repair or replacement costs associated with the damage. HECO will have the right to suspend repair work if continuing with the work might jeopardize the safety of any person or property. In such event, HECO will notify Host of the particular condition or situation affecting safety, and when Host corrects the condition or situation, HECO will resume work as soon as practicable. Host will be responsible to HECO for all additional mobilization and demobilization costs associated therewith.

#### **4.7 Alteration of Facility:**

Host will not undertake any alterations or repairs to the Facility that may adversely affect the operation and maintenance of the System (i) without giving at least five (5) working days prior written notice to HECO, setting forth the work to be undertaken (except in the event of emergency

repairs, in which event notices may be given by telephone), and (ii) without affording HECO the opportunity to review plans for such work and consult with Host's professionals regarding methods of conducting any such work in a manner likely to reduce or eliminate risks of damage or adverse effect upon the operation of the System. HECO will have no authority to stop any such work or prevent improvements or alterations to the Facility. HECO will be equitably compensated by Host for any costs proximately arising from substantial changes to the Facility, which adversely impact HECO's ability to operate the System as designed and installed, or cause HECO to make modifications to the System (for example, changes in piping or wiring to accommodate a construction change, addition or removal of an engine or piece of equipment resulting from the change in use or amount of use by the Facility). All advice HECO provides concerning the work to be undertaken shall be subject to the separate independent judgment of Host's professionals, and Host will be responsible for all damages to the System resulting from Host's work. HECO will, at its expense, repair any damage to the Facility resulting from the installation and/or operation of the System, but will have no other responsibility for repair of the Facility, except for repairs that are directly attributable to installation or operation of the System.

#### **4.8 Purchase and Sale of Electrical Power Output and Thermal Energy:**

Host will purchase from HECO the electrical and thermal energy produced by the System and used by the Facility in accordance with the pricing detailed in Appendices B and C hereto. In addition to the unit of usage charges, Host shall pay to HECO a fixed monthly facilities fee to cover the cost of the heat recovery equipment not included in HECO's normal electrical rate structure. Usage of electrical and thermal energy will be metered and measured by comparable means applied to commercial suppliers. HECO will pay for all fuel costs used by the System.

#### **4.9 Minimum Energy Take:**

Host will accept a minimum amount of available cogeneration thermal output of the System not to fall below the BTUs per month according to Appendix C, provided that the System is operable and capable of producing the output necessary to supply the minimum thermal output following the date at which HECO notifies the Host that the System is ready for normal full load operation ("the Minimum energy Take"). If Host closes the Facility to customers or business guests or significantly reduces operations to undergo a renovation or similar event ("Down Period"), then Host may be excused from payment of the Minimum Energy Take for the Down Period so long as (a) the aggregate duration of Down Periods does not exceed six (6) months during the Initial Term of the Agreement or two (2) weeks during any extension of the Agreement term thereafter; and (b) the then-current term of the Agreement is extended by the number of months (or weeks) in which any portion of the Minimum Energy Take is not paid pursuant to this section. Host may purchase from any other party or source thermal energy requirements that exceed the maximum output of the System. Host agrees to purchase all of its electrical requirements from HECO.

#### **4.10 Payment Terms:**

Host will pay HECO's invoices for electrical, thermal energy, and facility fee upon presentment. Any portion of the invoice amount not paid before the next regular bill is calculated will be assessed a late charge of one percent (1%) per month until paid in full.

#### **4.11: Compliance with Laws**

Host, at all times, shall observe and comply with all applicable laws, regulations, governmental rules, orders and ordinances applicable to the performance of its obligations under this Agreement.

## Section 5. General Terms

### 5.1 Ownership of System:

HECO will at all times own the System and all plans and specifications related to it. HECO may file, record and perfect its security and ownership interest in the System. Host shall cooperate with and execute all documents, including a UCC-1 financing statement, necessary for HECO to do so.

### 5.2 Use of Subcontractors:

HECO will be permitted to use subcontractors to perform its obligations under this Agreement, provided that HECO shall remain obligated to satisfy all of its obligations under this Agreement.

### 5.3 Term of Agreement:

The Initial Term ("Initial Term") of this Agreement will commence on the Effective Date and terminate 20 years after the date on which HECO certifies in writing that the System has achieved commercial operation. After the Initial Term, this Agreement will automatically renew and continue for successive twenty-four (24) month periods ("Extended Terms") unless either party provides written notice of intent not to renew no later than ninety (90) days prior to the end of the Initial Term or any Extended Term, as the case may be. In the event that delays addressed under Section 4 above are caused by Host during the Initial Term, then HECO may elect to extend the Initial Term by the amount of accumulated time related to the delays.

At the end of the Term of this Agreement, (1) HECO shall retain ownership of the System and shall have the right to use the System for any purpose, including projects unrelated to Host, and (2) HECO shall remove the skid mounted system from the site at its cost, the fuel supplier will remove their tanks at their cost, and Host shall be responsible for the costs to remove the remaining elements of the System from the Facility.

### 5.4 Termination:

#### A. Host's Rights:

Host may terminate this Agreement upon HECO's material breach hereunder if, after written notice to HECO of the alleged breach and Host's demand to cure such breach, (a) HECO has not, within thirty (30) days of such notice, cured the breach or begun and diligently pursued efforts reasonably calculated to cure the breach in a reasonable time, or (b) HECO has not cured the breach within one-hundred-twenty (120) days of such notice despite its reasonable efforts to do so. Upon such termination, HECO will, at its expense, promptly remove the System, which will be limited to removal of the cogenerator and attached related equipment. The foundation pad and all piping need not be removed, but any piping remaining will be capped. Except as limited in this Agreement, Host may pursue all other legal and equitable remedies available to it arising from such breach.

In addition, after installation of the System, if Host demonstrates to HECO's satisfaction that the total CHP energy costs (electric, thermal and facilities) for any 120 day period exceed the energy costs that Host would incur for the same period for equivalent operations if Host used Host-owned chillers and/or paid for electrical energy directly from the HECO grid pursuant to the applicable HECO (non-CHP schedule) tariff rate, then Host may terminate the Agreement upon thirty (30) days written notice and pay HECO for all recorded project development and construction costs, including AFUDC, HECO has incurred prior to the termination date and all other costs that cannot reasonably be avoided immediately thereafter. Conditioned upon payment of such costs by Host, Host will be offered the opportunity to purchase the System from HECO *as is, where is, without warranty*, at a negotiated price to be approved by the PUC and subject to a new or revised agreement discussed



below. Alternatively, or if a negotiated price and contract cannot be mutually agreed upon, HECO will, at Host's sole cost, remove the System from the Facility. In such circumstance, HECO may utilize the System or any part of it as it sees fit. If Host purchases and retains the System or any major component of the System, it will enter into a new or revised agreement with HECO reflecting the changed circumstances. In addition, Host shall pay HECO a termination charge equal to the total value of the discount provided through the electricity discount in the CHP tariff for the six (6) months preceding the termination date.

**B. HECO's Rights:**

HECO may terminate this Agreement upon Host's failure to make payment as provided in Section 4.10 (Payment Terms) of this Agreement after no less than three (3) business days written notice and demand by HECO that such payment be made. Upon such termination, HECO may, at Host's sole cost, remove the System, which will be limited to removal of the cogenerator and attached related equipment. The foundation pad and all piping need not be removed, but any piping remaining will be capped. Except as limited in this Agreement, HECO may pursue all other legal and equitable remedies available to it arising from such breach.

HECO may also terminate this Agreement upon Host's material breach hereunder if, after written notice to Host of the alleged breach and HECO's demand to cure such breach, (a) Host has not, within thirty (30) days of such notice, cured the breach or begun and diligently pursued efforts reasonably calculated to cure the breach in a reasonable time, or (b) Host has not cured the breach within one-hundred-twenty (120) days of such notice despite its reasonable efforts to do so. Except as limited in this Agreement, HECO may pursue all other legal and equitable remedies available to it arising from such breach. Upon such termination, HECO will, at Host's sole expense, remove the System, which will be limited to removal of the cogenerator and attached related equipment. The foundation pad and all piping need not be removed, but any piping remaining will be capped. Except as limited in this Agreement, HECO may pursue all other legal and equitable remedies available to it arising from such breach. In addition, at any time during the term of this Agreement, including prior to construction of the Facility, if HECO determines, in its reasonable discretion, that the economic viability of the project is materially impaired, HECO may cease operations and terminate this Agreement without cost or liability to HECO other than removal of the System. In such event, if the System has been installed, HECO will offer Host the opportunity to purchase the System, *as is, where is, without warranty*, at a negotiated cost to be approved by the Commission. If Host does not purchase the System, HECO shall be responsible, at its own cost, for removing the System, which will be limited to removal of the cogenerator and attached related equipment. The foundation pad and all piping need not be removed but any piping remaining will be capped.

HECO may also terminate this Agreement if Host uses electricity not supplied by HECO (other than energy from a non-fossil source or from the Host's own emergency generator when operated during emergency periods, or for limited test periods, or at HECO's request) during the term of this Agreement.

**5.5 Indemnification:**

HECO shall defend and indemnify Host, its officers, directors, agents and employees against all claims, liabilities, damages, penalties, costs and expenses (including reasonable attorneys' fees) arising from property damage and/or personal injury (including wrongful death) to the extent and only to the extent caused by HECO's (including its employees, agents and contractors) negligent, willful or tortious acts or omissions in performing its obligations under this Agreement.

Host shall defend and indemnify HECO, its officers, directors, agents and employees against all claims, liabilities, damages, penalties, costs and expenses (including reasonable attorneys' fees)

arising from property damage and/or personal injury (including wrongful death) to the extent and only to the extent caused by Host's (including its employees, agents and contractors) negligent, willful or tortious acts or omissions in performing its obligations under this Agreement.

The parties' respective defense and indemnification obligations will survive the expiration or termination of this Agreement for the period set forth in any applicable statute of limitation. Such indemnification will not be limited to the extent of insurance coverage.

#### **5.6 Limitations of Liability:**

Except as expressly stated herein, neither party, nor its employees, agents, contractors, subcontractors or suppliers, shall be liable to the other for any punitive, exemplary, indirect, special, incidental or consequential loss or damages, including but not limited to, lost profit, of any nature whatsoever, arising out of their performance or non-performance hereunder.

Except for defense and indemnification obligations required under Section 5.5 above, HECO's aggregate liability under this Agreement arising out of or in connection with the performance or non-performance of this Agreement or any part thereof shall not exceed one year of estimated annual energy savings from the System.

The limitations in this Section shall survive termination of this Agreement and shall apply whether such claims or liabilities arise or are alleged in contract, tort (including negligence), strict liability or otherwise.

#### **5.7 Assignment:**

This Agreement may not be assigned in whole or in part without the written consent of the other party, which consent may not be unreasonably withheld or delayed, except that Host may assign the Agreement without HECO's consent to any party acquiring the Facility, provided that such assignment is on notice to HECO, the assignee agrees to be bound hereby and the assignee has a net worth in excess of assignor. Notwithstanding the foregoing, HECO may assign, mortgage, pledge, or otherwise transfer its interests in this Agreement and/or the System to (i) any lender, providing financing for the System or (ii) an affiliate of HECO as long as such affiliate is comparable in terms of its financial situation and its technical ability to perform the Agreement, in either case without obtaining the consent of Host. Such assignees shall be bound by all of HECO's obligations under the Agreement.

#### **5.8 Governing Law:**

This Agreement will be governed, interpreted, and enforced in accordance with the laws of the State of Hawaii, other than the laws thereof that would require reference to the laws of any other jurisdiction.

#### **5.9 No Third Party Beneficiaries:**

Host and HECO do not intend to benefit any person or entity not a signatory to this Agreement. No third party beneficiaries are intended or will be created by operation of this Agreement.

#### **5.10 Binding Effect:**

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, legal representatives, and permitted assigns.

## 5.11 Insurance:

5.11.1 Coverage by HECO. During the term of the Agreement, HECO will adequately self-insure through its parent Hawaiian Electric Industries, Inc. or maintain at its sole cost and expense the following insurance coverage:

(a) Commercial General Liability Insurance against claims of third parties for personal injury and property damage arising from HECO's maintenance of the System, in an amount of not less than Five Million Dollars (\$5,000,000) per occurrence/annual aggregate, and Property Insurance on an all-risk form covering all owned and non-owned assets (including leased, rented or borrowed) HECO may use in the performance of this agreement, including a waiver of subrogation from the insurer in favor of the Additional Insureds.

(b) Workers' Compensation Insurance to provide statutory workers compensation benefits, as required by the laws of the state of Hawaii and, Employers' Liability Insurance with a limit of not less than One Hundred Thousand Dollars (\$100,000) for each employee; and

(c) Business Automobile Insurance against claims for personal injury and property damage in an amount of not less than One Million Dollars (\$1,000,000) per occurrence.

(d) HECO will provide Host with a certificate containing evidence of such coverage prior to commencing any work hereunder with respect to the applicable System and thereafter will provide Host with appropriate evidence of such coverage upon each anniversary date of the policy.

5.11.2 Coverage by Host. During the term of the Agreement, Host will adequately maintain at its sole cost and expense the following insurance coverage:

(a) Commercial General Liability Insurance against the risks of personal injury and property damage occurring on, in or about the Facility, or arising from Host's operation of the System, in an amount of not less than One Million Dollars (\$1,000,000) per occurrence, Two Million Dollars (\$2,000,000) annual aggregate, and Property Insurance on an all-risk form (?) covering replacement value of the Facility.

(b) Workers' Compensation Insurance to provide statutory workers compensation benefits, as required by the laws of the state of Hawaii and: (i) Employers' Liability Insurance with a limit of not less than One Hundred Thousand Dollars (\$100,000) for each employee; and

(c) Business Automobile Insurance against claims for personal injury and property damage in an amount of not less than One Million Dollars (\$1,000,000) per occurrence.

(d) Host will provide HECO with a certificate containing evidence of such coverage prior to HECO commencing any work hereunder with respect to the applicable System and thereafter will provide HECO with appropriate evidence of such coverage upon each anniversary date of the policy.

5.11.3 Insurance Policies. All insurance policies required under this Section 11 will be issued by insurers of recognized responsibility. The policy of insurance for Commercial General Liability Insurance will name the other party as an additional insured and will contain an agreement by the insurer that such policy will not be terminated, canceled or materially reduced in coverage without at least thirty (30) days prior written notice to the additional insured; provided such notice will be ten (10) days in the case of a failure to pay premiums.

#### **5.12 Notices:**

Notices will be given by (i) certified mail, return receipt requested, postage paid, or (ii) delivery services such as Federal Express or similar service, or (ii) by facsimile. Notices not given by mail will be effective upon actual receipt by the party to whom the notice is directed. Notices will be addressed as per Appendix F

#### **5.13 Integration and Modification:**

This Agreement shall constitute the entire understanding between the parties, superseding any and all previous understandings, oral or written, pertaining to the subject matter contained herein. The parties have entered into this Agreement in reliance upon the representations and mutual undertakings contained herein and not in reliance upon any oral or written representation or information provided to one party by any representative of the other party. Neither party shall claim at any time that it entered into this Agreement in whole or in part based on any representation not stated in this Agreement. This Agreement may be amended or supplemented by and only by written instrument duly executed by each of the parties.

#### **5.14 PUC Authority:**

If the PUC orders changes or modifications to this Agreement, then the Agreement shall be amended as ordered, provided that, to the extent possible, the Agreement shall be amended to preserve the economic and operational arrangements between the parties as set forth in this Agreement. If it is not possible to maintain the economic and operational arrangements, and if the changes or modifications would result in material adverse impacts on the Host's or HECO's rights, obligations or benefits under this Agreement, then the Host or HECO, as the case may be, may terminate this Agreement by providing written notice to the other within thirty (30) days of receiving written notice of the order from HECO.

**5.15 Reservation of Rights:** Nothing in this Agreement shall limit HECO's ability to exercise its rights or expand or diminish its liability with respect to the provision of electrical service pursuant to HECO's Tariff as filed with the PUC or the PUC's Standards for Electric Utility Service in the State of Hawaii, which currently are included in the PUC's General Order Number 7, as either may be amended from time to time.

#### **5.16 Waiver:**

The failure of any party to enforce any provision of this Agreement will not be construed to be a waiver of the provision, or affect the validity of this Agreement or the right of any party to enforce any provision. The waiver of any breach of this Agreement will not be held to constitute a waiver of any other breach.

#### **5.17 Nondisclosure of Confidential Information:**

Information provided to HECO relating to Host's non-utility generation alternative and its business operation, and designated in writing by Host as being confidential, shall be treated as confidential. HECO may disclose such information to the PUC and the Consumer Advocate, subject to PUC issuance of a protective order. The electric rate discount provided to Host shall not be considered to be confidential.

#### **5.18 Force Majeure:**

For purposes of this Agreement, "Force Majeure Event" means any event: (a) that is beyond the reasonable control of the affected party; and (b) that the affected party is unable to prevent or

provide against by exercising reasonable diligence, including the following events or circumstances, but only to the extent they satisfy the preceding requirements: acts of war, public disorder, insurrection or rebellion; floods, hurricanes, earthquakes, lightning, storms, and other natural calamities; explosions or fires; strikes, work stoppages, or labor disputes; embargoes; and sabotage. If a Force Majeure Event prevents a party from fulfilling any obligations under this Agreement, such party will promptly notify the other party in writing, and will keep the other party informed on a continuing basis of the scope and duration of the Force Majeure Event. The affected party will specify in reasonable detail the circumstances of the Force Majeure Event, its expected duration, and the steps that the affected party is taking to mitigate the effects of the event on its performance. The affected party will be entitled to suspend or modify its performance of obligations under this Agreement, other than the obligation to make payments then due or becoming due under this Agreement, but only to the extent that the effect of the Force Majeure Event cannot be mitigated by the use of reasonable efforts. The affected party will use reasonable efforts to resume its performance as soon as possible.

**5.19 Representations:**

HECO and Host each represents and warrants respectively that: (a) It has all necessary right, power and authority to execute, deliver and perform this Agreement; and (b) The execution, delivery and performance of this Agreement by it will not result in a violation of any law or regulation of any governmental authority, or conflict with, or result in a breach of, or cause a default under, any agreement or instrument to which such party is also a party or by which it is bound.

**5.20 Attorneys' Fees and Costs**

The prevailing party in any action, arbitration or proceeding to enforce the provisions of this Agreement shall be entitled to recover its reasonable attorneys' fees and costs incurred therein.

**5.21 Effect of Headings:**

The headings or titles of the several sections and exhibits hereof are for convenience of reference and shall not affect the construction or interpretation of any provision of this Agreement.

**5.22 Relationship of Parties:**

Nothing in this Agreement shall be deemed to constitute any party hereto as partner, agent or representative of the other party or to create any fiduciary relationship between the parties.

**5.23 Multiple Counterparts:**

This Agreement may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have set their hand the day and year first above written.

**Hawaiian Electric Company, Inc.**

By: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_  
(Print Name)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_  
(Print Name)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_  
(Print Name)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Appendices:**

Appendix A - Description of the System

Schedule 1-A - Permitting and Anticipated Schedule

Appendix B – Electricity Pricing

Appendix C – Thermal Energy Pricing

Appendix D - Example Monthly Cogeneration Energy Bill

Appendix E - Contingencies

Appendix F – Contact Information

## Appendix A

### Description of \_\_\_\_\_ System

The CHP System designed for \_\_\_\_\_ was a balance of Facility electrical baseload, chilled water requirements, absorption chiller equipment sizes, and reliability. While the Facility may operate continuously for many weeks the following \_\_\_\_\_ profile provided the basis for the control system design for the CHP System.

The \_\_\_\_\_ CHP System consists of the following major components:

- \_\_\_\_ HESS size CG Module: continuous duty, \_\_\_\_-fired \_\_\_\_kW distributed cogeneration reciprocating engine, synchronous generator, heat recovery equipment, integrated protective and interconnecting switchgear, onboard microprocessor control system, synchronizing system, and weatherproof, sound-attenuated cabinet with cabinet mounted mufflers.
- \_\_\_\_ size-ton absorption chiller will be located \_\_\_\_\_
- \_\_\_\_ size-ton cooling towers will be located \_\_\_\_\_
- The balance of plant equipment will include a size-ton intercooler chiller, pumps, control valves, fill and expansion tanks, with associated piping and electrical equipment.

If requested by Host and HECO determines that it is feasible and can be provided at a reasonable cost, Host-sited CHP System islanding capability (i.e., the ability to automatically remain in service isolated from the HECO grid) may be provided by HECO as indicated below, provided that compliance with interconnections standards in HECO tariff Rule 14H shall be met and maintained. Standard CHP Systems do not have islanding capability.

- ☐ If this box is checked, the CHP System is equipped with islanding capability. Host agrees to make a non-refundable contribution of \$\_\_\_\_\_ to cover the incremental cost incurred by HECO to provide the islanding capability, and such non-refundable contribution shall be payable upon CHP System installation and startup.

#### Work by Others

\_\_\_\_\_ fuel storage tank(s) to be used for the fuel supply will be installed by \_\_\_\_\_

The following figure is a one-line diagram of the conceptual design of the System. The \_\_\_\_ size kW cogen units have a thermal output capability of \_\_\_\_ therms/hr at full load. However, the \_\_\_\_ cogen units will be operated at approximately \_\_\_\_ kW each to allow the thermal output to match the size-ton chiller capacity having a thermal requirement of approximately \_\_\_\_ therms/hr.

The Net Capacity of the CHP system generating units is defined as the Hess CG Module nameplate rating minus the intercooler chiller load.

#### SCHEDULE 1-A

## **Appendix B**

### **Electric Energy Charges and Billing**

The electric energy supplied by HECO to Host will be billed under the applicable rate schedule (i.e., Schedule J or Schedule PS), and all its provisions shall apply except as modified below:

#### **Electric Energy Rate Discount:**

The customer's total monthly bill under the applicable rate schedule shall be reduced by the following rate adjustment applied to the total kWh produced by the CHP System and used by the Host's Facility:

All kWh from CHP System      - 1.0 ¢/kWh

HECO shall install a meter on the CHP System to measure the total monthly kWh supplied by the System to which the above energy rate adjustment shall apply.

Host will receive an annual cumulative electricity discount credit at a guaranteed minimum level based upon an assumed CHP System annual equivalent availability rate of 85%. The guaranteed minimum discount per Contract Year will be equal to the following:

$$\text{Minimum Discount} = [(A \times 85\%) \times (8760 - B)] \times C$$

Where:

A = the net capacity of the CHP System generating units in KW specified in Appendix A;

B = number of hours during the year in which the customer does not take at least 75% of the available CHP System electric output;

C = the energy rate discount in ¢/kWh noted above;

If the Host's total actual electricity discount for any Contract Year (as shown on HECO's bills to Host) does not equal the Minimum Discount for that Contract Year as calculated above, then Host will be credited with the difference on the billing for the first period in the following year.



## Appendix C

### Thermal Energy Pricing

Thermal Charge – of \_\_\_\_ ¢/therm to be added to customer's monthly bill:

The customer is subject to a minimum monthly thermal energy charge based on the Thermal Energy Minimum Take of \_\_\_\_\_ therms per month described below.

The Thermal Charge shall be adjusted on June 30 each year based on the percentage change from the previous year's Gross Domestic Product Implicit Price Deflator ("GDPIPD"). The percentage change in GDPIPD will be measured from a base of 110.66 for the year 2002 to the reported value for the year in which the adjustment is made.

If the GDPIPD index is discontinued or revised during the term of this Agreement, then another government index or computation by which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the GDPIPD index has not been discontinued or revised.

#### Thermal Energy Minimum Take:

The thermal energy monthly minimum take is based on a \_\_-day a week, 24-hour day, 4 week month, resulting in a total \_\_\_\_ hours of operation. A 85% thermal load of \_\_ therms per hour times \_\_\_\_ hours of operation results in the calculated minimum take level of \_\_\_\_ therms per month.

**Appendix D**

**Example Monthly Cogeneration Energy Bill**

**Appendix D (continued)**

**Example Monthly Cogeneration Energy Bill**

## **Appendix E**

### **Contingencies**

This Agreement is predicated upon the assumption that the Host clearly meets all of the criteria established in HECO's CHP Tariff for eligibility. If in the final project implementation, it is discovered that any of those criteria are not met, HECO has the option to either discontinue the project in accordance with the terms of this Agreement or renegotiate the Thermal Rate to reach an equitable going forward rate.

The following assumptions are key elements of the basic elements of the basic pricing for the CHP Systems:

1. The project can be completed using standard components available from Hess Microgen – i.e. no “one off” components are required.
2. All components may be skid mounted or located within reasonable proximity in a readily accessible area with no major reconstruction required for access.
3. Construction can be completed utilizing cranes and other equipment available on the island where the system is to be located.
4. Piping and electrical runs to interconnect with existing systems are less than 250 feet in length.
5. Air emissions permits do not require additional emissions controls beyond those currently commercial available from Hess Microgen.

If the system does not comply with any of the noted assumptions, the thermal pricing will take such a variance into consideration.

**Appendix F**

Contact Information for Notices

Host Designated Contact:

HECO Designated Contact:

SHEET NO. 58  
Effective \_\_\_\_\_, 2003

## SCHEDULE CHP

### CUSTOMER-SITED UTILITY-OWNED COGENERATION SERVICE

#### AVAILABILITY:

Applicable to customers who have a sustained minimum electric power load of 250 kW, and a thermal energy requirement of not less than 12 therms/hour, and who meet the requirements for service under this Schedule as provided in the Terms and Conditions provided below. The Customer-sited Combined Heat and Power ("CHP") System provided under this Schedule will be designed to supply a portion of the customer's electricity and thermal energy requirements. The Company will continue to serve the customer's supplemental electricity power requirement from the Company's system. Customers requesting service under this Schedule shall execute a Combined Heat and Power Agreement ("CHP Agreement") subject to the terms and conditions set forth below.

#### RATES:

All rates and provisions of the otherwise applicable rate schedule shall apply except as modified below:

#### Energy Rate Discount:

The Schedule CHP customer's monthly bill shall be reduced by the following energy rate discount applied to the total kWh supplied from the Customer-sited CHP System:

All kWh from Customer-sited CHP System - per kWh -1.6¢/kWh

HAWAII ELECTRIC LIGHT COMPANY, INC.

Transmittal Letter Dated October 10, 2003.

Sheet No. 58A  
Effective

Schedule CHP - Continued

Annual Minimum Electric Discount:

The customer will receive an annual cumulative electricity discount at a guaranteed minimum level based upon an assumed CHP System annual equivalent availability rate of 85%. The guaranteed minimum discount per Contract Year will be equal to the following:

$$\text{Minimum Discount} = [((A \times 85\%) \times (8760 - B)) \times C]$$

Where:

- A = the net capacity of the CHP System generating units in KW specified in Appendix A of the CHP Agreement;
- B = number of hours during the year in which the customer does not take at least 75% of the available CHP System electric output.
- C = the energy rate discount in ¢/kWh noted above;

If the customer's total actual electricity discount for any Contract Year (as shown on the Company's bills to the customer) does not equal the Minimum Discount for that Contract Year as calculated above, then the customer will be credited with the difference on the billing for the first billing period in the following year.

Facilities Charge:

The following Facilities Charge shall apply to Schedule CHP customers with absorption chillers and cooling towers installed and owned by the utility. These charges will be escalated at the compound rate of 3% per year effective January 1 of each year beginning in 2004, to account for the expected increases in the equipment costs.

Chiller Size:

50 Tons Absorption Chiller	\$560 per month
60 Tons Absorption Chiller	\$680 per month
70 Tons Absorption Chiller	\$720 per month
85 Tons Absorption Chiller	\$795 per month
115 Tons Absorption Chiller	\$950 per month

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Schedule CHP - Continued

Facilities Charge - continued:

Chiller Size:

150 Tons Absorption Chiller	\$1,130 per month
240 Tons Absorption Chiller	\$1,480 per month
300 Tons Absorption Chiller	\$1,770 per month
350 Tons Absorption Chiller	\$1,970 per month
500 Tons Absorption Chiller	\$3,150 per month

Thermal Charge:

Schedule CHP customers shall be charged the thermal charge specified in the customer's CHP Agreement. The base thermal charge shall be 50 cents per therm. The contract thermal charge may vary by +/- 50% of the base thermal charge depending upon the characteristics of the particular installation. The thermal charge is intended to be the means to deal with project cost differences that derive from the nature of the site available for the installation. If the site enables the installation of a pre-packaged, skid-mounted CHP system, the thermal charge can be lower and still yield an adequate return for the Company and an appropriate level of savings for the customer. If the site requires that the various components of the Customer-sited CHP System be field-installed and interconnected, the thermal charge may be higher to cover the extra cost. Ultimately, the thermal charge rate will be a negotiated value in each case as it is not only the means to deal with project cost differences, but it is also the means to deal with competitive situations.

Schedule CHP customers will be required to accept the minimum amount of available cogeneration thermal output (therms per month) of the Customer-sited CHP System specified in the customer's CHP Agreement, provided that the CHP System is operable and capable of producing the output necessary to supply the minimum thermal output.

The Thermal Charge shall be adjusted on June 30 of each Contract Year based on the percentage change from the previous

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Schedule CHP - Continued

Thermal Charge - continued:

year's Gross Domestic Product Implicit Price Deflator ("GDPIPD"). The percentage change in GDPIPD will be measured from a base of 110.66 for the year 2002 (1996=100) to the reported final value for the year in which the adjustment is made.

Termination Charge:

A Termination Charge may be assessed as specified in the CHP Agreement.

EFFECTIVE DATE OF CHP AGREEMENT:

Following execution of a CHP Agreement with a customer, the Company will file a forty five (45) day notice transmittal with the Commission specifying the customer, the estimated capital costs for the Customer's CHP system, the rate components, and the effective date of the CHP Agreement, together with the CHP Agreement. The effective date of the CHP Agreement must be at least forty-five (45) days after the filing of the fortyfive-day file and suspend CHP system notice transmittal. The fortyfive-day file and suspend CHP system notice transmittal shall have attached to it a certificate of service showing service, at the time of filing, on the Division of Consumer Advocacy of the Department of Commerce and Consumer Affairs of the State of Hawaii (the "Consumer Advocate"). The forty five-day notice file and suspend notice transmittal shall be kept open for public inspection (except that the thermal charge and customer information deemed to be confidential and proprietary will be deleted and filed pursuant to a Protective Order issued by the Commission).

The effective date of the CHP Agreement will be the first day of the month following the expiration of the notice period (of at least 45 days), unless the Commission issues an order suspending the effective date of the CHP Agreement within the notice period.

If the Commission issues an order suspending the effective date of the CHP Agreement, the CHP Agreement will not be effective until the first day of the month following the Commission's issuance of an order allowing the CHP Agreement to take effect.

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Schedule CHP - Continued

Effective Date of CHP Agreement - continued:

If the Commission issues an order suspending the effective date of the CHP Agreement, and the effective date of the CHP Agreement is delayed by more than forty five (45) days as a result of the suspension order, then either the customer or the Company may terminate the CHP Agreement by providing written notice of such termination prior to the effective date of the CHP Agreement.

If the Commission conditions its order allowing the CHP Agreement to take effect upon the Company and the customer agreeing to modifications to the CHP Agreement, the Company and the customer must execute a conforming amendment to the CHP Agreement with the required modifications within forty five (45) days of the issuance of the order (unless such period is extended by mutual written agreement), and the CHP Agreement will not be effective until the first day of the month following execution and filing with the Commission of the conforming amendment; provided that if the customer or the Company elects not to execute such a conforming amendment within such forty five-day period, as extended, then the CHP Agreement is terminated.

TERMS AND CONDITIONS:

1. The Company shall have the sole and exclusive discretion to determine a customer's eligibility for service under this Schedule. The Company's Eligibility Criteria for participation in this Schedule are attached as Attachment I.

The customer must provide the Company with information on its total energy costs (electricity power and thermal energy costs) for the past 24 months including sufficient supporting information such as fuel bills, records of its fuel requirements and consumption. The customer shall provide the Company with additional information as may be required by the Company to determine the customer's eligibility for service under this Schedule, including operation characteristics and future business plans that may impact its future energy requirements and energy costs.

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Schedule CHP - Continued

TERMS AND CONDITIONS - continued:

2. Upon a customer's acceptance of a conceptual proposal for a CHP facility located on that customer's site, the Company shall require that the customer enter into a letter of intent to continue the pursuit of the development of a CHP system. The letter of intent will provide that the customer shall reimburse the Company for its engineering expenses up to a specified amount if the final design of the system achieves approximately the same level of economic benefits as the conceptual proposal and the customer decides to not move forward with the project. If the final design does not achieve the same level of benefits and the customer declines to continue with the development of the project or the Company declines to continue with the development of a CHP project, the Company shall be responsible for those engineering costs. If both parties agree to continue with the project, the engineering costs will be folded into the total project costs.
3. Customers applying for service under this Schedule shall sign a standard CHP Agreement as provided in Attachment II to this Schedule, subject to the terms and conditions set forth in this Schedule.
4. The Company shall be the sole supplier of the customer's total electric energy requirements during the CHP Agreement term, other than energy from a non-fossil fuel energy source or from customer's own emergency generator when operated during emergency periods, or for limited test periods, or at the Company's request.

Customers applying for service under this Schedule must have a minimum sustained electric power load of 250 kW and a minimum thermal energy requirement of 12 therms per hour.

5. The Company will, at its expense, design, construct, install, own, maintain, and operate a CHP system and all necessary appurtenances on the customer's site (Customer-sited CHP System), including the interconnection with the Company's electric system in accordance with the Company's Rule 14H.

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Schedule CHP - Continued

TERMS AND CONDITIONS - continued:

The Company will, at its expense, obtain all the necessary permits where required, for the installation and operation of the Customer-sited CHP System.

6. The Company will, at its expense, design, construct, install, own, maintain, and operate a Customer-sited CHP System-integrated absorption chiller and other heat recovery equipment, when requested or required by the customer. Customers requesting and requiring a Customer-sited CHP System-integrated absorption chiller and/or other heat recovery equipment will be charged the monthly Facilities Charge provided above, to recover the Company's associated costs.
7. The Customer-sited CHP System provided under this Schedule will be designed to supply a portion of the customer's electricity and thermal energy requirements. The Company will continue to serve the customer's supplemental electricity power requirement from the Company's system as well as their full demand when the Customer-sited CHP System is off-line. A customer shall, at its expense, own, operate, and maintain an alternate thermal energy source for its heating and/or cooling load for use as back-up when the Customer-sited CHP System is unavailable for any reason including during maintenance and unscheduled outages, as well as to supply the customer's supplemental thermal energy requirements.

For customers with existing electric service with the Company prior to service under this Schedule, they will continue to be billed and served at the existing meter under the applicable rate schedule except as modified under this Schedule. In addition, the Company will, at its expense, install meter(s) on the Customer-sited CHP System to meter the kWh output eligible for the energy rate discount provided above.

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Schedule CHP - Continued

TERMS AND CONDITIONS - continued:

For customers without existing electric service with the Company prior to service under this Schedule, the Company shall install the required meters for billing purposes under this Schedule and the applicable rate schedule.

The customer's monthly bill shall be based on the total energy power supplied from the Company's system and from the Customer-sited CHP System.

8. The Company will, at its expense, install, own, operate, and maintain the BTU meter(s) including all necessary appurtenances, to meter the thermal energy supplied from the Customer-sited CHP System for billing purposes. However, the Company may use an estimate of monthly thermal energy consumption and reconciled at intervals not exceeding 3 months. The customer shall be charged the Thermal Charge specified in the customer's CHP Agreement.
9. The customer shall, at its expense, provide the Company with suitable and adequate site on its premises that is acceptable to, and approved by the Company for the construction and operation of the Customer-sited CHP System and all the required appurtenances including a Customer-sited CHP System-integrated absorption chiller or other heat recovery equipment requested and required by the customer. The customer shall, at its expense, ensure that the site meets all Federal, State, and County environmental codes and standards, as to be permittable at a reasonable cost to the Company for the installation and operation of the Customer-sited CHP System. The customer and Company's responsibilities regarding hazardous substances in the site, pre-existing or found during or after construction or in the course of the Company's operation and maintenance of the Customer-sited CHP System, shall be as specified in the CHP Agreement. The customer shall grant the Company a 24-hour access to the site throughout the year, during the CHP Agreement term, and the Company must be able to limit access to the CHP plant to authorized utility or customer personnel.

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Effective

Schedule CHP - Continued

TERMS AND CONDITIONS - continued:

10. If diesel is the chosen fuel for the site, the customer shall allow the Company a shared-use of its existing fuel tank(s), if any, for the Customer-sited CHP System's fuel storage at no cost to the Company. The customer shall ensure that the fuel tanks meet all regulatory requirements and standards. The customer shall continue to own such existing fuel tanks used by the Company, and the Company, at its expense, will operate and maintain such fuel tanks in accordance with the CHP Agreement.

If there are no existing customer-owned fuel tanks or the existing tanks are not acceptable to the Company, the Company will, at its expense, design, construct, install, own, maintain, and operate the fuel tank(s) necessary for the Customer-sited CHP System's fuel storage. The customer shall provide a suitable and adequate site in its premises, acceptable and approved by the Company, for the installation and operation of the Company's fuel tanks, at no cost to the Company. The customer shall grant the Company a 24-hour access to the site throughout the term of the CHP Agreement.

The Company will, at its expense, purchase the fuel necessary to operate the Customer-sited CHP System. The customer will normally procure its own fuel supply for its back-up thermal energy system for its cooling and/or heating loads. When using the customer's existing fuel tank(s), the Company will, at its expense, install meters to meter the fuel used by the Customer-sited CHP System as well as the fuel used by the customer for its back-up thermal energy system for its cooling or heating. If the customer uses more fuel than its available fuel supply, the Customer shall reimburse the Company for the cost of fuel provided by the Company, based on the actual total cost of such fuel, including taxes.

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Schedule CHP - Continued

TERMS AND CONDITIONS - continued:

11. Customer-sited CHP System installation at the site must be able to comply with the interconnection standards in the Company's Rule 14H at reasonable cost. If the customer requires or desires islanding of the Customer-sited CHP System, the customer must make a non-refundable contribution of the incremental cost that will be incurred by the Company to provide that capability.
12. The customer's CHP Agreement shall specify the rated capacity of the Customer-sited CHP System being installed and owned by the Company, provide a description of the Customer-sited CHP System including its expected availability factor and other operating information, and all other terms and conditions deemed necessary by the Company to serve the customer under this Schedule.
13. Customer information shall be treated as confidential to the extent that the Company and the customer identify it as confidential or proprietary, subject to Commission issuance of a protective order.
14. The term of the CHP Agreement is 20 years.
15. The CHP Agreement provides for the termination by the Company or the customer under specified conditions and the detailed terms and conditions related to the various termination scenarios.

Energy Cost Adjustment:

The energy cost adjustment provided in the Energy Cost Adjustment Clause shall be added to the customer's monthly bill.

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Schedule CHP - Continued

Integrated Resource Planning Cost Recovery Provision:

The Integrated Resource Planning Cost Recovery surcharge shall be added to the customer's monthly bill.

RULES AND REGULATIONS:

Service supplied under this Schedule shall be subject to the Rules of the Company.

HAWAII ELECTRIC LIGHT COMPANY, INC.

Transmittal Letter Dated October 10, 2003.



ATTACHMENT I

Schedule CHP Eligibility Criteria

1. Customer must have a minimum sustained electric load of 250 KW.
2. Customer must have a minimum sustained heat load of 12 therms/hour. The customer's heat load requirement may be partially met by absorption chilling.
3. An environmentally clean site, for which permits necessary for the installation and operation of the CHP plant can be obtained at reasonable cost, must be available to the Company at no cost.
4. The site must be accessible to the Company on a 24 hour-per-day basis, 7 days per week for operating and maintenance purposes, and the Company must be able to limit access to the CHP plant to authorized persons.
5. Reasonably accessible locations must be available within the site for the required equipment, including standard CHP plant packages used by the Company, cooling tower(s) if required, and fuel storage.
6. Customer must be willing and able to pay via a facilities charge for the non-generation equipment needed to utilize the waste heat, or needed to provide a fully integrated system such as chillers, heat exchangers, pumps etc.
7. Appropriate customer-owned and operated electrical equipment, chillers and a back-up heat source must be available for peaking and CHP plant outage coverage if required by customer to maintain their operations.
8. Customer must be up to date on electricity billing and no late payment of bills over past 24 months.
9. Customer must control an existing facility or be able to clearly demonstrate an ability to complete a project under development.
10. Customer must have requisite authority to provide site and enter into the 20-year CHP Agreement.
11. CHP plant installation at the site must be able to comply with interconnection standards in Rule 14H at reasonable cost. Customer must be willing to pay for incremental costs if the customer requires or desires islanding of the CHP unit(s).

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ATTACHMENT I - Continued

12. Customer must be willing and able to comply with the terms and conditions of the CHP Agreement.
13. The Company is not required to serve a customer under this rate schedule if, in the Company's judgment, the lower rates provided would not achieve the rate schedule's intended purpose and would not benefit the Company's customers as a whole. The Customer may be required to provide business operation information that is relevant to establishing its eligibility to receive service under this rate schedule. The Customer shall be responsible for demonstrating the credibility of the business operation information provided.

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Transmittal Letter Dated October 10, 2003.

**Combined Heat and Power Agreement****Section 1. Parties and Effective Date****1.1 Parties to Agreement:**

This Combined Heat and Power Agreement ("Agreement") is entered into between (i) \_\_\_\_\_ ("Host"), located at \_\_\_\_\_ and (ii) **Hawaii Electric Light Company, Inc.**, ("HELCO") located at 1200 Kilauea Avenue, Hilo, Hawaii 96820-4295. Host and HELCO are sometimes referred to hereinafter, respectively, as "Party" and, collectively, as the "Parties."

**1.2 Effective Date:**

This Agreement will be filed with the State of Hawaii Public Utilities Commission ("PUC") upon execution. The Effective Date of this Agreement will be the date when HELCO receives a decision and order from the PUC approving the Agreement, electric tariff discount and recovery of waste heat equipment costs through the facility fee and thermal fee, a related fuel supply contract authorizing the full recovery of the CHP Cogeneration System fuel costs and related taxes through HELCO's Energy Cost Adjustment Clause.

If HELCO has not received such decision and order from the PUC within sixty (60) days of the date of the last signature to this Agreement, then either the Host or HELCO may terminate this Agreement by providing written notice of such termination delivered to the other prior to the Effective Date. The "Contract Year" shall be defined as the twelve-month period starting with the first full month following the Effective Date of this Agreement.

**Section 2. Recitals****2.1 Recital 1:**

Host is the owner and operator of \_\_\_\_\_ located at \_\_\_\_\_ ("Facility"). Host desires to purchase from HELCO all of its electricity and a portion of its thermal energy in order to provide electrical and thermal service to the Facility, to decrease its energy costs and to improve the reliability of a portion of the Facility.

**2.2 Recital 2:**

HELCO desires to offer its customers Combined Heat and Power ("CHP") systems to respond to customer demand and to increase customers' energy alternatives. CHP systems can help reduce a customer's total energy consumption and costs. Use of distributed generation resources such as CHP should benefit HELCO by extending the life of its transmission and distribution systems, as well as by the incremental addition of generating capacity created by CHPs.

**2.3 Recital 3:**

HELCO desires to design, construct, install, own, maintain, and operate a CHP cogeneration system ("System") at the Facility for the production of electricity and thermal energy.

### **Section 3. HELCO Commitments**

#### **3.1 Needs Assessment:**

HELCO has conducted an analysis of electricity and fuel use at the Facility to determine the amount of electrical and the amount of thermal energy (derived from waste heat generated from the CHP unit(s)) needed by the Facility.

#### **3.2 Permits and Approvals:**

From the Effective Date, HELCO will exercise due diligence to obtain, at its expense, the building permit and fuel supply for the System, as applicable, and all other governmental and non-governmental agencies as are necessary for the installation and operation of the System, as set forth on Schedule 1-A, and to maintain such approvals throughout the term of this Agreement ("Permits"). If all Permits necessary to install the System are not obtained within one (1) year of the Effective Date of this Agreement, then either party may terminate this Agreement on written notice to the other party delivered before such Permits are obtained, and thereafter, the parties will have no further liability or responsibility to the other.

#### **3.3 Design, Construction and Installation of the System:**

HELCO will, at its expense, design, construct, install, own, operate and maintain the System at the Facility. A description of the System is attached as Appendix A. HELCO and Host have agreed to a preliminary conceptual design of the System. In accordance with the schedule set forth in Schedule 1-A, attached hereto, HELCO will provide to Host more detailed System installation plans and specifications. Host and HELCO agree to work together to further define the System installation plans and specifications. HELCO's right to install and construct the System and Host's obligation to purchase and pay for energy from the System are conditioned upon Host's approval of the final plans and specifications, which approval shall not unreasonably be withheld by Host. HELCO will design the System to operate with minimal or no adverse impacts on Host's and Host's customers' or business guests' use of the Facility.

Host acknowledges that HELCO's obligation to construct and operate the System is subject to certain construction, financial and other assumptions and contingencies noted herein and in Appendix E, attached. If such assumptions are revealed to be inaccurate, regardless of fault by either party, or such contingencies are not met or satisfied, the parties agree in good faith to attempt to negotiate amendments or modifications to this Agreement to address the changed circumstances due to the inaccurate assumptions or unsatisfied contingencies. If the parties cannot mutually agree upon such amendments or modifications, then either party may terminate the Agreement upon ten (10) days prior written notice to the other and, absent fraud or other tortious conduct by the non-terminating party, each party shall bear its own costs incurred before termination.

To the extent reasonably possible, HELCO will perform construction activities to minimize interference with use of the Facility by Host and its customers or business guests. Host acknowledges, however, that construction activities, by their nature, may involve noise and/or dust during Host's regular business hours. HELCO will provide and install a sound attenuation cabinet and foundation capable of adequately supporting the operation of the System in accordance with all applicable regulations and codes. Upon completion of construction, and completion of commissioning and break-in periods, HELCO will notify Host in writing that Commercial Operation has commenced, and that the System has been constructed in accordance with all permits.

If diesel is the chosen fuel for the site, the Host shall allow HELCO, a shared-use of its existing fuel tank(s), if any, for the CHP System's fuel storage at no cost to HELCO. The Host shall ensure that

the fuel tanks meet all regulatory requirements and standards. The HOST shall continue to own such existing fuel tanks used by HELCO, and HELCO will, at its expense, operate and maintain such fuel tanks in accordance with this Agreement. If the Host has no existing fuel tanks or the existing tanks are not acceptable to HELCO, HELCO will, at its expense, design, construct, install, own, maintain, and operate the fuel tank(s) necessary for the CHP System's fuel storage. The Host shall provide a suitable and adequate site in its premises, acceptable and approved by HELCO, for the installation and operation of the HELCO's fuel tanks, at no cost to HELCO. The Host shall grant HELCO a 24-hour access to the site throughout the term of the CHP Agreement.

### **3.4 Maintenance of the System**

HELCO will, at its expense, perform all routine and emergency repairs, maintenance, and operation of the System. HELCO will provide at its expense, all labor, material, and other supplies necessary to perform such maintenance, repair and operation, including component or System replacement as necessary in HELCO's reasonable discretion. In the event of a partial or complete failure of the System, HELCO will respond as soon as possible following written or telephone notification from Host, and will effect such repairs as soon as reasonably possible to restore the System. HELCO shall perform all maintenance activities so as not to unreasonably interfere with use of the Facility by Host and its customers or business guests. HELCO shall design the System to insure that, in the event of any System failure, Host's electric system can automatically access power made available from the HELCO grid. Host, at its own expense, shall at all times maintain backup heating and cooling sources sufficient to operate the Facility without the System.

HELCO shall comply with all applicable laws with respect to the handling, removal and proper disposal of any Hazardous Substances, as defined by HRS 128D-1, brought onto, or released, spilled or disposed of at the Facility by HELCO or its subcontractors. HELCO shall not be liable or responsible for any pre-existing Hazardous Substances at the Facility, including the agreed-upon site for the System.

### **3.5 Fuel Purchase for System:**

HELCO will, at its expense, purchase the fuel necessary to operate the CHP System. The Host will normally procure its own fuel supply for its back-up thermal energy system for its cooling and/or heating loads. When using the Host's existing fuel tank(s), HELCO will, at its expense, install meters to meter the fuel used by the CHP System as well as the fuel used by the Host for its back-up thermal energy system for its cooling or heating. In such circumstances, the Host shall reimburse HELCO for the total actual cost of such fuel provided by HELCO, including taxes.

### **3.6 Billing and Reporting:**

HELCO will furnish to Host monthly statements showing the amount of electrical and thermal energy produced by the System that is consumed by the Facility and the total charges. Cogeneration energy bills will be in a form similar to the example attached as Appendix D. HELCO will invoice Host on a monthly basis.

### **3.7 Work Performed:**

HELCO will be solely responsible for maintenance, operation and repair work performed on the System by HELCO and HELCO's agents, contractors and subcontractors. Except to the extent permitted by HELCO in writing, neither Host nor its employees, agents or contractors shall perform any such work on the System. HELCO will not be responsible for any loss, damage, cost or expense arising out of or resulting from unauthorized work. HELCO warrants that it will own the System free of all mechanics' liens.

### **3.8 Compliance with Laws**

HELCO, at all times, shall observe and comply with all applicable laws, regulations, governmental rules, orders and ordinances applicable to the performance of its obligations under this Agreement.

## **Section 4. Host Commitments**

### **4.1 Accuracy of Information:**

HELCO has relied and is entitled and will continue to rely on the accuracy of all information provided by Host pertaining to the Facility's physical configuration and operations ("Host Provided Information"). If HELCO's ability to install, maintain or operate the System as agreed herein and in the final plans and specifications is materially impaired as a result of inaccurate Host Provided Information, regardless of fault on Host's part, then HELCO shall be entitled, at its election, to either (1) equitably adjust the thermal energy pricing agreed upon herein to reflect increased maintenance or operation burdens on HELCO, (2) equitably adjust schedules and/or other terms of this Agreement affected by the inaccurate Host Provided Information; or (3) terminate the Agreement as provided in section 3.3 above if Host and HELCO cannot agree upon such equitable adjustment(s).

### **4.2 Provision of Site:**

A mechanical single line plan for the System based on conceptual design is attached as Appendix A hereto. Host shall provide space acceptable to HELCO for installation of the System at the Facility. Such space (the "Site") shall be provided at no cost to HELCO for the duration of the term of this Agreement and HELCO is hereby granted a license for use and access to the Site as contemplated by this Agreement. If the parties cannot mutually agree upon an acceptable Site for the System or any of its material components within a reasonable time, this Agreement may be terminated by either party upon written notice to the other, and thereafter, the parties will have no further liability or responsibility to the other.

HELCO shall not be obligated to accept any Site containing any hazardous substances, hazardous waste or the like as defined by or as may be defined by any applicable federal, state or local law or regulation. HELCO shall have the right, but not the obligation, to perform environmental assessments, including surface and subsurface sampling, of the Site.

HELCO shall not be liable or responsible for any contamination or hazardous substances existing at the Site prior to HELCO's construction and operation of the System at the Site ("pre-existing contamination"). HELCO shall provide written notice to Host immediately upon the discovery of any pre-existing contamination. Except in case of emergency, neither HELCO nor its subcontractors will disturb, disrupt, remove, alter, dislodge or otherwise handle any pre-existing contamination at the Site without the prior written consent of Host. HELCO may suspend work until Host adequately removes or otherwise addresses the pre-existing contamination to HELCO's reasonable satisfaction and in a manner acceptable to all governmental or regulatory agencies with jurisdiction over the matter, including the State of Hawaii Department of Health and the United States Environmental Protection Agency. If HELCO incurs additional mobilization or demobilization costs as a result, Host shall pay or reimburse HELCO for such costs. If the discovery and presence of pre-existing contamination precludes installation of the System, then either party may, on written notice to the other, terminate this Agreement. Upon such termination, Host will reimburse HELCO for all reasonable costs incurred prior to termination.

HELCO shall insure that the location of the Site for the System will be permissible under all applicable federal, state and local statutes, ordinances and codes.

#### **4.3 Cooperation on Permits and Approvals**

Host shall timely cooperate with HELCO's efforts to obtain all permits and approvals required under section 3.2 above or elsewhere in this Agreement, and shall cooperate with all reasonable requests by HELCO related thereto.

#### **4.4 Facility Ownership:**

Host warrants that it has the full authority, including necessary consents, if any, from any mortgagees, lien holders, lessors or lessees, to permit HELCO to install and operate the System at the Facility for the term of this Agreement and subject to the terms and conditions of this Agreement.

#### **4.5 Access:**

Host will at all times provide safe and reasonable access to the Facility and Site as necessary for HELCO to construct, install, operate and maintain the System and its components. Thermal energy and electrical power output will be transmitted from the System, and necessary lines connecting the System with Host's pre-existing conventional electrical and heating/cooling systems will be run in, under, over, across, and through the Facility. Host will compensate HELCO for actual costs and expenses incurred (at HELCO's then standard rates for HELCO's employees or subcontracted maintenance personnel performing work on Systems in the same geographic area) due to any delays or additional work that becomes necessary because of inadequate access to the Facility, Site or work area. HELCO shall have the obligation to notify Host if access for such purposes is inadequate. HELCO will have the right to suspend work if there is inadequate access until such time as necessary access is provided. In such event, HELCO will notify Host of the particular condition or situation affecting access, and when Host corrects the condition or situation, HELCO will resume work as soon as practicable. Host will be responsible to HELCO for all additional mobilization and demobilization costs associated therewith.

#### **4.6 Maintenance of Facility:**

Host will, at its expense, maintain the Facility and pay all utilities, taxes, and bills associated with the Facility and the Site, excluding the System. Host is fully responsible for the upkeep and maintenance of all of Host's equipment that will utilize the System's outputs, such as, but not limited to, hot water, process heat, space heating, and absorption air conditioning. Host will properly maintain in full working order all of Host's equipment that Host may shut down while utilizing the System, including but not limited to back-up generators, independent air conditioning or heating units and hot water heaters. Host shall also provide a data link.

In the event of damage to the System that is caused by Host or those for whom Host is legally responsible, Host agrees to pay all repair or replacement costs associated with the damage. HELCO will have the right to suspend repair work if continuing with the work might jeopardize the safety of any person or property. In such event, HELCO will notify Host of the particular condition or situation affecting safety, and when Host corrects the condition or situation, HELCO will resume work as soon as practicable. Host will be responsible to HELCO for all additional mobilization and demobilization costs associated therewith.

#### **4.7 Alteration of Facility:**

Host will not undertake any alterations or repairs to the Facility that may adversely affect the operation and maintenance of the System (i) without giving at least five (5) working days prior written notice to HELCO, setting forth the work to be undertaken (except in the event of emergency repairs, in which event notices may be given by telephone), and (ii) without affording HELCO the opportunity to review plans for such work and consult with Host's professionals regarding methods

of conducting any such work in a manner likely to reduce or eliminate risks of damage or adverse effect upon the operation of the System. HELCO will have no authority to stop any such work or prevent improvements or alterations to the Facility. HELCO will be equitably compensated by Host for any costs proximately arising from substantial changes to the Facility, which adversely impact HELCO's ability to operate the System as designed and installed, or cause HELCO to make modifications to the System (for example, changes in piping or wiring to accommodate a construction change, addition or removal of an engine or piece of equipment resulting from the change in use or amount of use by the Facility). All advice HELCO provides concerning the work to be undertaken shall be subject to the separate independent judgment of Host's professionals, and Host will be responsible for all damages to the System resulting from Host's work. HELCO will, at its expense, repair any damage to the Facility resulting from the installation and/or operation of the System, but will have no other responsibility for repair of the Facility, except for repairs that are directly attributable to installation or operation of the System.

#### **4.8 Purchase and Sale of Electrical Power Output and Thermal Energy:**

Host will purchase from HELCO the electrical and thermal energy produced by the System and used by the Facility in accordance with the pricing detailed in Appendices B and C hereto. In addition to the unit of usage charges, Host shall pay to HELCO a fixed monthly facilities fee to cover the cost of the heat recovery equipment not included in HELCO's normal electrical rate structure. Usage of electrical and thermal energy will be metered and measured by comparable means applied to commercial suppliers. HELCO will pay for all fuel costs used by the System.

#### **4.9 Minimum Energy Take:**

Host will accept a minimum amount of available cogeneration thermal output of the System not to fall below the BTUs per month according to Appendix C, provided that the System is operable and capable of producing the output necessary to supply the minimum thermal output following the date at which HELCO notifies the Host that the System is ready for normal full load operation ("the Minimum energy Take"). If Host closes the Facility to customers or business guests or significantly reduces operations to undergo a renovation or similar event ("Down Period"), then Host may be excused from payment of the Minimum Energy Take for the Down Period so long as (a) the aggregate duration of Down Periods does not exceed six (6) months during the Initial Term of the Agreement or two (2) weeks during any extension of the Agreement term thereafter; and (b) the then-current term of the Agreement is extended by the number of months (or weeks) in which any portion of the Minimum Energy Take is not paid pursuant to this section. Host may purchase from any other party or source thermal energy requirements that exceed the maximum output of the System. Host agrees to purchase all of its electrical requirements from HELCO.

#### **4.10 Payment Terms:**

Host will pay HELCO's invoices for electrical, thermal energy, and facility fee upon presentment. Any portion of the invoice amount not paid before the next regular bill is calculated will be assessed a late charge of one percent (1%) per month until paid in full.

#### **4.11: Compliance with Laws**

Host, at all times, shall observe and comply with all applicable laws, regulations, governmental rules, orders and ordinances applicable to the performance of its obligations under this Agreement.



## Section 5. General Terms

### 5.1 Ownership of System:

HELCO will at all times own the System and all plans and specifications related to it. HELCO may file, record and perfect its security and ownership interest in the System. Host shall cooperate with and execute all documents, including a UCC-1 financing statement, necessary for HELCO to do so.

### 5.2 Use of Subcontractors:

HELCO will be permitted to use subcontractors to perform its obligations under this Agreement, provided that HELCO shall remain obligated to satisfy all of its obligations under this Agreement.

### 5.3 Term of Agreement:

The Initial Term ("Initial Term") of this Agreement will commence on the Effective Date and terminate 20 years after the date on which HELCO certifies in writing that the System has achieved commercial operation. After the Initial Term, this Agreement will automatically renew and continue for successive twenty-four (24) month periods ("Extended Terms") unless either party provides written notice of intent not to renew no later than ninety (90) days prior to the end of the Initial Term or any Extended Term, as the case may be. In the event that delays addressed under Section 4 above are caused by Host during the Initial Term, then HELCO may elect to extend the Initial Term by the amount of accumulated time related to the delays.

At the end of the Term of this Agreement, (1) HELCO shall retain ownership of the System and shall have the right to use the System for any purpose, including projects unrelated to Host, and (2) HELCO shall remove the skid mounted system from the site at its cost, the fuel supplier will remove their tanks at their cost, and Host shall be responsible for the costs to remove the remaining elements of the System from the Facility.

### 5.4 Termination:

#### A. Host's Rights:

Host may terminate this Agreement upon HELCO's material breach hereunder if, after written notice to HELCO of the alleged breach and Host's demand to cure such breach, (a) HELCO has not, within thirty (30) days of such notice, cured the breach or begun and diligently pursued efforts reasonably calculated to cure the breach in a reasonable time, or (b) HELCO has not cured the breach within one-hundred-twenty (120) days of such notice despite its reasonable efforts to do so. Upon such termination, HELCO will, at its expense, promptly remove the System, which will be limited to removal of the cogenerator and attached related equipment. The foundation pad and all piping need not be removed, but any piping remaining will be capped. Except as limited in this Agreement, Host may pursue all other legal and equitable remedies available to it arising from such breach.

In addition, after installation of the System, if Host demonstrates to HELCO's satisfaction that the total CHP energy costs (electric, thermal and facilities) for any 120 day period exceed the energy costs that Host would incur for the same period for equivalent operations if Host used Host-owned chillers and/or paid for electrical energy directly from the HELCO grid pursuant to the applicable HELCO (non-CHP schedule) tariff rate, then Host may terminate the Agreement upon thirty (30) days written notice and pay HELCO for all recorded project development and construction costs, including AFUDC, HELCO has incurred prior to the termination date and all other costs that cannot reasonably be avoided immediately thereafter. Conditioned upon payment of such costs by Host, Host will be offered the opportunity to purchase the System from HELCO *as is, where is, without warranty*, at a negotiated price to be approved by the PUC and subject to a new or revised agreement

discussed below. Alternatively, or if a negotiated price and contract cannot be mutually agreed upon, HELCO will, at Host's sole cost, remove the System from the Facility. In such circumstance, HELCO may utilize the System or any part of it as it sees fit. If Host purchases and retains the System or any major component of the System, it will enter into a new or revised agreement with HELCO reflecting the changed circumstances. In addition, Host shall pay HELCO a termination charge equal to the total value of the discount provided through the electricity discount in the CHP tariff for the six (6) months preceding the termination date.

**B. HELCO's Rights:**

HELCO may terminate this Agreement upon Host's failure to make payment as provided in Section 4.10 (Payment Terms) of this Agreement after no less than three (3) business days written notice and demand by HELCO that such payment be made. Upon such termination, HELCO may, at Host's sole cost, remove the System, which will be limited to removal of the cogenerator and attached related equipment. The foundation pad and all piping need not be removed, but any piping remaining will be capped. Except as limited in this Agreement, HELCO may pursue all other legal and equitable remedies available to it arising from such breach.

HELCO may also terminate this Agreement upon Host's material breach hereunder if, after written notice to Host of the alleged breach and HELCO's demand to cure such breach, (a) Host has not, within thirty (30) days of such notice, cured the breach or begun and diligently pursued efforts reasonably calculated to cure the breach in a reasonable time, or (b) Host has not cured the breach within one-hundred-twenty (120) days of such notice despite its reasonable efforts to do so. Except as limited in this Agreement, HELCO may pursue all other legal and equitable remedies available to it arising from such breach. Upon such termination, HELCO will, at Host's sole expense, remove the System, which will be limited to removal of the cogenerator and attached related equipment. The foundation pad and all piping need not be removed, but any piping remaining will be capped. Except as limited in this Agreement, HELCO may pursue all other legal and equitable remedies available to it arising from such breach. In addition, at any time during the term of this Agreement, including prior to construction of the Facility, if HELCO determines, in its reasonable discretion, that the economic viability of the project is materially impaired, HELCO may cease operations and terminate this Agreement without cost or liability to HELCO other than removal of the System. In such event, if the System has been installed, HELCO will offer Host the opportunity to purchase the System, *as is, where is, without warranty*, at a negotiated cost to be approved by the Commission. If Host does not purchase the System, HELCO shall be responsible, at its own cost, for removing the System, which will be limited to removal of the cogenerator and attached related equipment. The foundation pad and all piping need not be removed but any piping remaining will be capped.

HELCO may also terminate this Agreement if Host uses electricity not supplied by HELCO (other than energy from a non-fossil source or from the Host's own emergency generator when operated during emergency periods, or for limited test periods, or at HELCO's request) during the term of this Agreement.

**5.5 Indemnification:**

HELCO shall defend and indemnify Host, its officers, directors, agents and employees against all claims, liabilities, damages, penalties, costs and expenses (including reasonable attorneys' fees) arising from property damage and/or personal injury (including wrongful death) to the extent and only to the extent caused by HELCO's (including its employees, agents and contractors) negligent, willful or tortious acts or omissions in performing its obligations under this Agreement.

Host shall defend and indemnify HELCO, its officers, directors, agents and employees against all claims, liabilities, damages, penalties, costs and expenses (including reasonable attorneys' fees)

arising from property damage and/or personal injury (including wrongful death) to the extent and only to the extent caused by Host's (including its employees, agents and contractors) negligent, willful or tortious acts or omissions in performing its obligations under this Agreement.

The parties' respective defense and indemnification obligations will survive the expiration or termination of this Agreement for the period set forth in any applicable statute of limitation. Such indemnification will not be limited to the extent of insurance coverage.

#### **5.6 Limitations of Liability:**

Except as expressly stated herein, neither party, nor its employees, agents, contractors, subcontractors or suppliers, shall be liable to the other for any punitive, exemplary, indirect, special, incidental or consequential loss or damages, including but not limited to, lost profit, of any nature whatsoever, arising out of their performance or non-performance hereunder.

Except for defense and indemnification obligations required under Section 5.5 above, HELCO's aggregate liability under this Agreement arising out of or in connection with the performance or non-performance of this Agreement or any part thereof shall not exceed one year of estimated annual energy savings from the System.

The limitations in this Section shall survive termination of this Agreement and shall apply whether such claims or liabilities arise or are alleged in contract, tort (including negligence), strict liability or otherwise.

#### **5.7 Assignment:**

This Agreement may not be assigned in whole or in part without the written consent of the other party, which consent may not be unreasonably withheld or delayed, except that Host may assign the Agreement without HELCO's consent to any party acquiring the Facility, provided that such assignment is on notice to HELCO, the assignee agrees to be bound hereby and the assignee has a net worth in excess of assignor. Notwithstanding the foregoing, HELCO may assign, mortgage, pledge, or otherwise transfer its interests in this Agreement and/or the System to (i) any lender, providing financing for the System or (ii) an affiliate of HELCO as long as such affiliate is comparable in terms of its financial situation and its technical ability to perform the Agreement, in either case without obtaining the consent of Host. Such assignees shall be bound by all of HELCO's obligations under the Agreement.

#### **5.8 Governing Law:**

This Agreement will be governed, interpreted, and enforced in accordance with the laws of the State of Hawaii, other than the laws thereof that would require reference to the laws of any other jurisdiction.

#### **5.9 No Third Party Beneficiaries:**

Host and HELCO do not intend to benefit any person or entity not a signatory to this Agreement. No third party beneficiaries are intended or will be created by operation of this Agreement.

#### **5.10 Binding Effect:**

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, legal representatives, and permitted assigns.

## 5.11 Insurance:

5.11.1 Coverage by HELCO. During the term of the Agreement, HELCO will adequately self-insure through its parent Hawaiian Electric Industries, Inc. or maintain at its sole cost and expense the following insurance coverage:

(a) Commercial General Liability Insurance against claims of third parties for personal injury and property damage arising from HELCO's maintenance of the System, in an amount of not less than Five Million Dollars (\$5,000,000) per occurrence/annual aggregate, and Property Insurance on an all-risk form covering all owned and non-owned assets (including leased, rented or borrowed) HELCO may use in the performance of this agreement, including a waiver of subrogation from the insurer in favor of the Additional Insureds.

(b) Workers' Compensation Insurance to provide statutory workers compensation benefits, as required by the laws of the state of Hawaii and, Employers' Liability Insurance with a limit of not less than One Hundred Thousand Dollars (\$100,000) for each employee; and

(c) Business Automobile Insurance against claims for personal injury and property damage in an amount of not less than One Million Dollars (\$1,000,000) per occurrence.

(d) HELCO will provide Host with a certificate containing evidence of such coverage prior to commencing any work hereunder with respect to the applicable System and thereafter will provide Host with appropriate evidence of such coverage upon each anniversary date of the policy.

5.11.2 Coverage by Host. During the term of the Agreement, Host will adequately maintain at its sole cost and expense the following insurance coverage:

(a) Commercial General Liability Insurance against the risks of personal injury and property damage occurring on, in or about the Facility, or arising from Host's operation of the System, in an amount of not less than One Million Dollars (\$1,000,000) per occurrence, Two Million Dollars (\$2,000,000) annual aggregate, and Property Insurance on an all-risk form (?) covering replacement value of the Facility.

(b) Workers' Compensation Insurance to provide statutory workers compensation benefits, as required by the laws of the state of Hawaii and: (i) Employers' Liability Insurance with a limit of not less than One Hundred Thousand Dollars (\$100,000) for each employee; and

(c) Business Automobile Insurance against claims for personal injury and property damage in an amount of not less than One Million Dollars (\$1,000,000) per occurrence.

(d) Host will provide HELCO with a certificate containing evidence of such coverage prior to HELCO commencing any work hereunder with respect to the applicable System and thereafter will provide HELCO with appropriate evidence of such coverage upon each anniversary date of the policy.

5.11.3 Insurance Policies. All insurance policies required under this Section 11 will be issued by insurers of recognized responsibility. The policy of insurance for Commercial General Liability Insurance will name the other party as an additional insured and will contain an agreement by the insurer that such policy will not be terminated, canceled or materially reduced in coverage without at least thirty (30) days prior written notice to the additional insured; provided such notice will be ten (10) days in the case of a failure to pay premiums.

#### **5.12 Notices:**

Notices will be given by (i) certified mail, return receipt requested, postage paid, or (ii) delivery services such as Federal Express or similar service, or (ii) by facsimile. Notices not given by mail will be effective upon actual receipt by the party to whom the notice is directed. Notices will be addressed as per Appendix F

#### **5.13 Integration and Modification:**

This Agreement shall constitute the entire understanding between the parties, superseding any and all previous understandings, oral or written, pertaining to the subject matter contained herein. The parties have entered into this Agreement in reliance upon the representations and mutual undertakings contained herein and not in reliance upon any oral or written representation or information provided to one party by any representative of the other party. Neither party shall claim at any time that it entered into this Agreement in whole or in part based on any representation not stated in this Agreement. This Agreement may be amended or supplemented by and only by written instrument duly executed by each of the parties.

#### **5.14 PUC Authority:**

If the PUC orders changes or modifications to this Agreement, then the Agreement shall be amended as ordered, provided that, to the extent possible, the Agreement shall be amended to preserve the economic and operational arrangements between the parties as set forth in this Agreement. If it is not possible to maintain the economic and operational arrangements, and if the changes or modifications would result in material adverse impacts on the Host's or HELCO's rights, obligations or benefits under this Agreement, then the Host or HELCO, as the case may be, may terminate this Agreement by providing written notice to the other within thirty (30) days of receiving written notice of the order from HELCO.

**5.15 Reservation of Rights:** Nothing in this Agreement shall limit HELCO's ability to exercise its rights or expand or diminish its liability with respect to the provision of electrical service pursuant to HELCO's Tariff as filed with the PUC or the PUC's Standards for Electric Utility Service in the State of Hawaii, which currently are included in the PUC's General Order Number 7, as either may be amended from time to time.

#### **5.16 Waiver:**

The failure of any party to enforce any provision of this Agreement will not be construed to be a waiver of the provision, or affect the validity of this Agreement or the right of any party to enforce any provision. The waiver of any breach of this Agreement will not be held to constitute a waiver of any other breach.

#### **5.17 Nondisclosure of Confidential Information:**

Information provided to HELCO relating to Host's non-utility generation alternative and its business operation, and designated in writing by Host as being confidential, shall be treated as confidential. HELCO may disclose such information to the PUC and the Consumer Advocate, subject to PUC issuance of a protective order. The electric rate discount provided to Host shall not be considered to be confidential.

#### **5.18 Force Majeure:**

For purposes of this Agreement, "Force Majeure Event" means any event: (a) that is beyond the reasonable control of the affected party; and (b) that the affected party is unable to prevent or provide against by exercising reasonable diligence, including the following events or circumstances, but only to the extent they satisfy the preceding requirements: acts of war, public disorder, insurrection or rebellion; floods, hurricanes, earthquakes, lightning, storms, and other natural calamities; explosions or fires; strikes, work stoppages, or labor disputes; embargoes; and sabotage. If a Force Majeure Event prevents a party from fulfilling any obligations under this Agreement, such party will promptly notify the other party in writing, and will keep the other party informed on a continuing basis of the scope and duration of the Force Majeure Event. The affected party will specify in reasonable detail the circumstances of the Force Majeure Event, its expected duration, and the steps that the affected party is taking to mitigate the effects of the event on its performance. The affected party will be entitled to suspend or modify its performance of obligations under this Agreement, other than the obligation to make payments then due or becoming due under this Agreement, but only to the extent that the effect of the Force Majeure Event cannot be mitigated by the use of reasonable efforts. The affected party will use reasonable efforts to resume its performance as soon as possible.

#### **5.19 Representations:**

HELCO and Host each represents and warrants respectively that: (a) It has all necessary right, power and authority to execute, deliver and perform this Agreement; and (b) The execution, delivery and performance of this Agreement by it will not result in a violation of any law or regulation of any governmental authority, or conflict with, or result in a breach of, or cause a default under, any agreement or instrument to which such party is also a party or by which it is bound.

#### **5.20 Attorneys' Fees and Costs**

The prevailing party in any action, arbitration or proceeding to enforce the provisions of this Agreement shall be entitled to recover its reasonable attorneys' fees and costs incurred therein.

#### **5.21 Effect of Headings:**

The headings or titles of the several sections and exhibits hereof are for convenience of reference and shall not affect the construction or interpretation of any provision of this Agreement.

#### **5.22 Relationship of Parties:**

Nothing in this Agreement shall be deemed to constitute any party hereto as partner, agent or representative of the other party or to create any fiduciary relationship between the parties.

#### **5.23 Multiple Counterparts:**

This Agreement may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have set their hand the day and year first above written.

**Hawaii Electric Light Company, Inc.**

By: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_  
(Print Name)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_  
(Print Name)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_  
(Print Name)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Appendices:**

Appendix A - Description of the System

Schedule 1-A - Permitting and Anticipated Schedule

Appendix B – Electricity Pricing

Appendix C – Thermal Energy Pricing

Appendix D - Example Monthly Cogeneration Energy Bill

Appendix E - Contingencies

Appendix F – Contact Information

## Appendix A

### Description of \_\_\_\_\_ System

The CHP System designed for \_\_\_\_\_ was a balance of Facility electrical baseload, chilled water requirements, absorption chiller equipment sizes, and reliability. While the Facility may operate continuously for many weeks the following \_\_\_\_\_ profile provided the basis for the control system design for the CHP System.

The \_\_\_\_\_ CHP System consists of the following major components:

- \_\_\_\_\_ HESS size CG Module: continuous duty, \_\_\_\_\_-fired \_\_\_\_\_kW distributed cogeneration reciprocating engine, synchronous generator, heat recovery equipment, integrated protective and interconnecting switchgear, onboard microprocessor control system, synchronizing system, and weatherproof, sound-attenuated cabinet with cabinet mounted mufflers.
- \_\_\_\_\_ size-ton absorption chiller will be located \_\_\_\_\_
- \_\_\_\_\_ size-ton cooling towers will be located \_\_\_\_\_
- The balance of plant equipment will include a size-ton intercooler chiller, pumps, control valves, fill and expansion tanks, with associated piping and electrical equipment.

If requested by Host and HELCO determines that it is feasible and can be provided at a reasonable cost, Host-sited CHP System islanding capability (i.e., the ability to automatically remain in service isolated from the HELCO grid) may be provided by HELCO as indicated below, provided that compliance with interconnections standards in HELCO tariff Rule 14H shall be met and maintained. Standard CHP Systems do not have islanding capability.

- ☐ If this box is checked, the CHP System is equipped with islanding capability. Host agrees to make a non-refundable contribution of \$\_\_\_\_\_ to cover the incremental cost incurred by HELCO to provide the islanding capability, and such non-refundable contribution shall be payable upon CHP System installation and startup.

#### Work by Others

\_\_\_\_\_ fuel storage tank(s) to be used for the fuel supply will be installed by \_\_\_\_\_

The following figure is a one-line diagram of the conceptual design of the System. The \_\_\_\_\_ size kW cogen units have a thermal output capability of \_\_\_\_\_ therms/hr at full load. However, the \_\_\_\_\_ cogen units will be operated at approximately \_\_\_\_\_ kW each to allow the thermal output to match the size-ton chiller capacity having a thermal requirement of approximately \_\_\_\_\_ therms/hr.

The Net Capacity of the CHP system generating units is defined as the Hess CG Module nameplate rating minus the intercooler chiller load.

#### SCHEDULE 1-A



## **Appendix B**

### **Electric Energy Charges and Billing**

The electric energy supplied by HELCO to Host will be billed under the applicable rate schedule (i.e., Schedule J or Schedule PS), and all its provisions shall apply except as modified below:

#### **Electric Energy Rate Discount:**

The customer's total monthly bill under the applicable rate schedule shall be reduced by the following rate adjustment applied to the total kWh produced by the CHP System and used by the Host's Facility:

All kWh from CHP System      - 1.0 ¢/kWh

HELCO shall install a meter on the CHP System to measure the total monthly kWh supplied by the System to which the above energy rate adjustment shall apply.

Host will receive an annual cumulative electricity discount credit at a guaranteed minimum level based upon an assumed CHP System annual equivalent availability rate of 85%. The guaranteed minimum discount per Contract Year will be equal to the following:

$$\text{Minimum Discount} = [(A \times 85\%) \times (8760 - B)] \times C$$

Where:

A = the net capacity of the CHP System generating units in KW specified in Appendix A;

B = number of hours during the year in which the customer does not take at least 75% of the available CHP System electric output;

C = the energy rate discount in ¢/kWh noted above;

If the Host's total actual electricity discount for any Contract Year (as shown on HELCO's bills to Host) does not equal the Minimum Discount for that Contract Year as calculated above, then Host will be credited with the difference on the billing for the first period in the following year.

## Appendix C

### Thermal Energy Pricing

Thermal Charge – of \_\_\_\_ ¢/therm to be added to customer's monthly bill:

The customer is subject to a minimum monthly thermal energy charge based on the Thermal Energy Minimum Take of \_\_\_\_\_ therms per month described below.

The Thermal Charge shall be adjusted on June 30 each year based on the percentage change from the previous year's Gross Domestic Product Implicit Price Deflator ("GDPIPD"). The percentage change in GDPIPD will be measured from a base of 110.66 for the year 2002 to the reported value for the year in which the adjustment is made.

If the GDPIPD index is discontinued or revised during the term of this Agreement, then another government index or computation by which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the GDPIPD index has not been discontinued or revised.

#### Thermal Energy Minimum Take:

The thermal energy monthly minimum take is based on a \_-day a week, 24-hour day, 4 week month, resulting in a total \_\_\_\_ hours of operation. A 85% thermal load of \_\_\_\_ therms per hour times \_\_\_\_ hours of operation results in the calculated minimum take level of \_\_\_\_ therms per month.

**Appendix D**

**Example Monthly Cogeneration Energy Bill**

**Appendix D (continued)**  
**Example Monthly Cogeneration Energy Bill**

## **Appendix E**

### **Contingencies**

This Agreement is predicated upon the assumption that the Host clearly meets all of the criteria established in HELCO's CHP Tariff for eligibility. If in the final project implementation, it is discovered that any of those criteria are not met, HELCO has the option to either discontinue the project in accordance with the terms of this Agreement or renegotiate the Thermal Rate to reach an equitable going forward rate.

The following assumptions are key elements of the basic elements of the basic pricing for the CHP Systems:

1. The project can be completed using standard components available from Hess Microgen – i.e. no “one off” components are required.
2. All components may be skid mounted or located within reasonable proximity in a readily accessible area with no major reconstruction required for access.
3. Construction can be completed utilizing cranes and other equipment available on the island where the system is to be located.
4. Piping and electrical runs to interconnect with existing systems are less than 250 feet in length.
5. Air emissions permits do not require additional emissions controls beyond those currently commercial available from Hess Microgen.

If the system does not comply with any of the noted assumptions, the thermal pricing will take such a variance into consideration.

**Appendix F**

Contact Information for Notices

Host Designated Contact:

HELCO Designated Contact:

SHEET NO. 60  
Effective \_\_\_\_\_, 2003

MAUI DIVISION

SCHEDULE CHP

CUSTOMER-SITED UTILITY-OWNED COGENERATION SERVICE

AVAILABILITY:

Applicable to customers who have a sustained minimum electric power load of 250 kW, and a thermal energy requirement of not less than 12 therms/hour, and who meet the requirements for service under this Schedule as provided in the Terms and Conditions provided below. The Customer-sited Combined Heat and Power ("CHP") System provided under this Schedule will be designed to supply a portion of the customer's electricity and thermal energy requirements. The Company will continue to serve the customer's supplemental electricity power requirement from the Company's system. Customers requesting service under this Schedule shall execute a Combined Heat and Power Agreement ("CHP Agreement") subject to the terms and conditions set forth below.

RATES:

All rates and provisions of the otherwise applicable rate schedule shall apply except as modified below:

Energy Rate Discount:

The Schedule CHP customer's monthly bill shall be reduced by the following energy rate discount applied to the total kWh supplied from the Customer-sited CHP System:

All kWh from Customer-sited CHP System - per kWh -1.5¢/kWh

MAUI ELECTRIC COMPANY, LIMITED

Transmittal Letter Dated October 10, 2003.

Sheet No. 60A  
Effective

MAUI DIVISION  
Schedule CHP - Continued

Annual Minimum Electric Discount:

The customer will receive an annual cumulative electricity discount at a guaranteed minimum level based upon an assumed CHP System annual equivalent availability rate of 85%. The guaranteed minimum discount per Contract Year will be equal to the following:

$$\text{Minimum Discount} = [((A \times 85\%) \times (8760 - B)) \times C]$$

Where:

- A = the net capacity of the CHP System generating units in KW specified in Appendix A of the CHP Agreement;
- B = number of hours during the year in which the customer does not take at least 75% of the available CHP System electric output.
- C = the energy rate discount in ¢/kWh noted above;

If the customer's total actual electricity discount for any Contract Year (as shown on the Company's bills to the customer) does not equal the Minimum Discount for that Contract Year as calculated above, then the customer will be credited with the difference on the billing for the first billing period in the following year.

Facilities Charge:

The following Facilities Charge shall apply to Schedule CHP customers with absorption chillers and cooling towers installed and owned by the utility. These charges will be escalated at the compound rate of 3% per year effective January 1 of each year beginning in 2004, to account for the expected increases in the equipment costs.

Chiller Size:

50 Tons Absorption Chiller	\$560 per month
60 Tons Absorption Chiller	\$680 per month
70 Tons Absorption Chiller	\$720 per month
85 Tons Absorption Chiller	\$795 per month
115 Tons Absorption Chiller	\$950 per month

MAUI ELECTRIC COMPANY, LIMITED

Transmittal Letter Dated October 10, 2003.



Sheet No. 60B  
Effective

MAUI DIVISION  
Schedule CHP - Continued

Facilities Charge - continued:

Chiller Size:

150 Tons Absorption Chiller	\$1,130 per month
240 Tons Absorption Chiller	\$1,480 per month
300 Tons Absorption Chiller	\$1,770 per month
350 Tons Absorption Chiller	\$1,970 per month
500 Tons Absorption Chiller	\$3,150 per month

Thermal Charge:

Schedule CHP customers shall be charged the thermal charge specified in the customer's CHP Agreement. The base thermal charge shall be 45 cents per therm. The contract thermal charge may vary by +/- 50% of the base thermal charge depending upon the characteristics of the particular installation. The thermal charge is intended to be the means to deal with project cost differences that derive from the nature of the site available for the installation. If the site enables the installation of a pre-packaged, skid-mounted CHP system, the thermal charge can be lower and still yield an adequate return for the Company and an appropriate level of savings for the customer. If the site requires that the various components of the Customer-sited CHP System be field-installed and interconnected, the thermal charge may be higher to cover the extra cost. Ultimately, the thermal charge rate will be a negotiated value in each case as it is not only the means to deal with project cost differences, but it is also the means to deal with competitive situations.

Schedule CHP customers will be required to accept the minimum amount of available cogeneration thermal output (therms per month) of the Customer-sited CHP System specified in the customer's CHP Agreement, provided that the CHP System is operable and capable of producing the output necessary to supply the minimum thermal output.

The Thermal Charge shall be adjusted on June 30 of each Contract Year based on the percentage change from the previous

MAUI ELECTRIC COMPANY, LIMITED

Transmittal Letter Dated October 10, 2003.

Sheet No. 60C  
Effective

MAUI DIVISION  
Schedule CHP - Continued

Thermal Charge - continued:

year's Gross Domestic Product Implicit Price Deflator ("GDPIPD"). The percentage change in GDPIPD will be measured from a base of 110.66 for the year 2002 (1996=100) to the reported final value for the year in which the adjustment is made.

Termination Charge:

A Termination Charge may be assessed as specified in the CHP Agreement.

EFFECTIVE DATE OF CHP AGREEMENT:

Following execution of a CHP Agreement with a customer, the Company will file a forty five (45) day notice transmittal with the Commission specifying the customer, the estimated capital costs for the Customer's CHP system, the rate components, and the effective date of the CHP Agreement, together with the CHP Agreement. The effective date of the CHP Agreement must be at least forty-five (45) days after the filing of the fortyfive-day file and suspend CHP system notice transmittal. The fortyfive-day file and suspend CHP system notice transmittal shall have attached to it a certificate of service showing service, at the time of filing, on the Division of Consumer Advocacy of the Department of Commerce and Consumer Affairs of the State of Hawaii (the "Consumer Advocate"). The forty five-day notice file and suspend notice transmittal shall be kept open for public inspection (except that the thermal charge and customer information deemed to be confidential and proprietary will be deleted and filed pursuant to a Protective Order issued by the Commission).

The effective date of the CHP Agreement will be the first day of the month following the expiration of the notice period (of at least 45 days), unless the Commission issues an order suspending the effective date of the CHP Agreement within the notice period.

If the Commission issues an order suspending the effective date of the CHP Agreement, the CHP Agreement will not be effective until the first day of the month following the Commission's issuance of an order allowing the CHP Agreement to take effect.

MAUI ELECTRIC COMPANY, LIMITED

Transmittal Letter Dated October 10, 2003.

Sheet No. 60D  
Effective

MAUI DIVISION  
Schedule CHP - Continued

Effective Date of CHP Agreement - continued:

If the Commission issues an order suspending the effective date of the CHP Agreement, and the effective date of the CHP Agreement is delayed by more than forty five (45) days as a result of the suspension order, then either the customer or the Company may terminate the CHP Agreement by providing written notice of such termination prior to the effective date of the CHP Agreement.

If the Commission conditions its order allowing the CHP Agreement to take effect upon the Company and the customer agreeing to modifications to the CHP Agreement, the Company and the customer must execute a conforming amendment to the CHP Agreement with the required modifications within forty five (45) days of the issuance of the order (unless such period is extended by mutual written agreement), and the CHP Agreement will not be effective until the first day of the month following execution and filing with the Commission of the conforming amendment; provided that if the customer or the Company elects not to execute such a conforming amendment within such forty five-day period, as extended, then the CHP Agreement is terminated.

TERMS AND CONDITIONS:

1. The Company shall have the sole and exclusive discretion to determine a customer's eligibility for service under this Schedule. The Company's Eligibility Criteria for participation in this Schedule are attached as Attachment I.

The customer must provide the Company with information on its total energy costs (electricity power and thermal energy costs) for the past 24 months including sufficient supporting information such as fuel bills, records of its fuel requirements and consumption. The customer shall provide the Company with additional information as may be required by the Company to determine the customer's eligibility for service under this Schedule, including operation characteristics and future business plans that may impact its future energy requirements and energy costs.

MAUI ELECTRIC COMPANY, LIMITED

Transmittal Letter Dated October 10, 2003.

Sheet No. 60E  
Effective

MAUI DIVISION  
Schedule CHP - Continued

TERMS AND CONDITIONS - continued:

2. Upon a customer's acceptance of a conceptual proposal for a CHP facility located on that customer's site, the Company shall require that the customer enter into a letter of intent to continue the pursuit of the development of a CHP system. The letter of intent will provide that the customer shall reimburse the Company for its engineering expenses up to a specified amount if the final design of the system achieves approximately the same level of economic benefits as the conceptual proposal and the customer decides to not move forward with the project. If the final design does not achieve the same level of benefits and the customer declines to continue with the development of the project or the Company declines to continue with the development of a CHP project, the Company shall be responsible for those engineering costs. If both parties agree to continue with the project, the engineering costs will be folded into the total project costs.
3. Customers applying for service under this Schedule shall sign a standard CHP Agreement as provided in Attachment II to this Schedule, subject to the terms and conditions set forth in this Schedule.
4. The Company shall be the sole supplier of the customer's total electric energy requirements during the CHP Agreement term, other than energy from a non-fossil fuel energy source or from customer's own emergency generator when operated during emergency periods, or for limited test periods, or at the Company's request.

Customers applying for service under this Schedule must have a minimum sustained electric power load of 250 kW and a minimum thermal energy requirement of 12 therms per hour.

5. The Company will, at its expense, design, construct, install, own, maintain, and operate a CHP system and all necessary appurtenances on the customer's site (Customer-sited CHP System), including the interconnection with the Company's electric system in accordance with the Company's Rule 14H.

MAUI ELECTRIC COMPANY, LIMITED

Transmittal Letter Dated October 10, 2003.

Sheet No. 60F  
Effective

MAUI DIVISION  
Schedule CHP - Continued

TERMS AND CONDITIONS - continued:

The Company will, at its expense, obtain all the necessary permits where required, for the installation and operation of the Customer-sited CHP System.

6. The Company will, at its expense, design, construct, install, own, maintain, and operate a Customer-sited CHP System-integrated absorption chiller and other heat recovery equipment, when requested or required by the customer. Customers requesting and requiring a Customer-sited CHP System-integrated absorption chiller and/or other heat recovery equipment will be charged the monthly Facilities Charge provided above, to recover the Company's associated costs.
7. The Customer-sited CHP System provided under this Schedule will be designed to supply a portion of the customer's electricity and thermal energy requirements. The Company will continue to serve the customer's supplemental electricity power requirement from the Company's system as well as their full demand when the Customer-sited CHP System is off-line. A customer shall, at its expense, own, operate, and maintain an alternate thermal energy source for its heating and/or cooling load for use as back-up when the Customer-sited CHP System is unavailable for any reason including during maintenance and unscheduled outages, as well as to supply the customer's supplemental thermal energy requirements.

For customers with existing electric service with the Company prior to service under this Schedule, they will continue to be billed and served at the existing meter under the applicable rate schedule except as modified under this Schedule. In addition, the Company will, at its expense, install meter(s) on the Customer-sited CHP System to meter the kWh output eligible for the energy rate discount provided above.

MAUI ELECTRIC COMPANY, LIMITED

Transmittal Letter Dated October 10, 2003.

Sheet No. 60G  
Effective

MAUI DIVISION  
Schedule CHP - Continued

TERMS AND CONDITIONS - continued:

For customers without existing electric service with the Company prior to service under this Schedule, the Company shall install the required meters for billing purposes under this Schedule and the applicable rate schedule.

The customer's monthly bill shall be based on the total energy power supplied from the Company's system and from the Customer-sited CHP System.

8. The Company will, at its expense, install, own, operate, and maintain the BTU meter(s) including all necessary appurtenances, to meter the thermal energy supplied from the Customer-sited CHP System for billing purposes. However, the Company may use an estimate of monthly thermal energy consumption and reconciled at intervals not exceeding 3 months. The customer shall be charged the Thermal Charge specified in the customer's CHP Agreement.
9. The customer shall, at its expense, provide the Company with suitable and adequate site on its premises that is acceptable to, and approved by the Company for the construction and operation of the Customer-sited CHP System and all the required appurtenances including a Customer-sited CHP System-integrated absorption chiller or other heat recovery equipment requested and required by the customer. The customer shall, at its expense, ensure that the site meets all Federal, State, and County environmental codes and standards, as to be permittable at a reasonable cost to the Company for the installation and operation of the Customer-sited CHP System. The customer and Company's responsibilities regarding hazardous substances in the site, pre-existing or found during or after construction or in the course of the Company's operation and maintenance of the Customer-sited CHP System, shall be as specified in the CHP Agreement. The customer shall grant the Company a 24-hour access to the site throughout the year, during the CHP Agreement term, and the Company must be able to limit access to the CHP plant to authorized utility or customer personnel.

MAUI ELECTRIC COMPANY, LIMITED

Transmittal Letter Dated October 10, 2003.

Sheet No. 60H  
Effective

MAUI DIVISION  
Schedule CHP - Continued

TERMS AND CONDITIONS - continued:

10. If diesel is the chosen fuel for the site, the customer shall allow the Company a shared-use of its existing fuel tank(s), if any, for the Customer-sited CHP System's fuel storage at no cost to the Company. The customer shall ensure that the fuel tanks meet all regulatory requirements and standards. The customer shall continue to own such existing fuel tanks used by the Company, and the Company, at its expense, will operate and maintain such fuel tanks in accordance with the CHP Agreement.

If there are no existing customer-owned fuel tanks or the existing tanks are not acceptable to the Company, the Company will, at its expense, design, construct, install, own, maintain, and operate the fuel tank(s) necessary for the Customer-sited CHP System's fuel storage. The customer shall provide a suitable and adequate site in its premises, acceptable and approved by the Company, for the installation and operation of the Company's fuel tanks, at no cost to the Company. The customer shall grant the Company a 24-hour access to the site throughout the term of the CHP Agreement.

The Company will, at its expense, purchase the fuel necessary to operate the Customer-sited CHP System. The customer will normally procure its own fuel supply for its back-up thermal energy system for its cooling and/or heating loads. When using the customer's existing fuel tank(s), the Company will, at its expense, install meters to meter the fuel used by the Customer-sited CHP System as well as the fuel used by the customer for its back-up thermal energy system for its cooling or heating. If the customer uses more fuel than its available fuel supply, the Customer shall reimburse the Company for the cost of fuel provided by the Company, based on the actual total cost of such fuel, including taxes.

MAUI ELECTRIC COMPANY, LIMITED

Transmittal Letter Dated October 10, 2003.

Sheet No. 60I  
Effective

MAUI DIVISION  
Schedule CHP - Continued

TERMS AND CONDITIONS - continued:

11. Customer-sited CHP System installation at the site must be able to comply with the interconnection standards in the Company's Rule 14H at reasonable cost. If the customer requires or desires islanding of the Customer-sited CHP System, the customer must make a non-refundable contribution of the incremental cost that will be incurred by the Company to provide that capability.
12. The customer's CHP Agreement shall specify the rated capacity of the Customer-sited CHP System being installed and owned by the Company, provide a description of the Customer-sited CHP System including its expected availability factor and other operating information, and all other terms and conditions deemed necessary by the Company to serve the customer under this Schedule.
13. Customer information shall be treated as confidential to the extent that the Company and the customer identify it as confidential or proprietary, subject to Commission issuance of a protective order.
14. The term of the CHP Agreement is 20 years.
15. The CHP Agreement provides for the termination by the Company or the customer under specified conditions and the detailed terms and conditions related to the various termination scenarios.

Energy Cost Adjustment:

The energy cost adjustment provided in the Energy Cost Adjustment Clause shall be added to the customer's monthly bill.

MAUI ELECTRIC COMPANY, LIMITED

Transmittal Letter Dated October 10, 2003.



Sheet No. 60J  
Effective

MAUI DIVISION  
Schedule CHP - Continued

Integrated Resource Planning Cost Recovery Provision:

The Integrated Resource Planning Cost Recovery surcharge shall be added to the customer's monthly bill.

RULES AND REGULATIONS:

Service supplied under this Schedule shall be subject to the Rules of the Company.

MAUI ELECTRIC COMPANY, LIMITED

Transmittal Letter Dated October 10, 2003.

ATTACHMENT I

Schedule CHP Eligibility Criteria

1. Customer must have a minimum sustained electric load of 250 KW.
2. Customer must have a minimum sustained heat load of 12 therms/hour. The customer's heat load requirement may be partially met by absorption chilling.
3. An environmentally clean site, for which permits necessary for the installation and operation of the CHP plant can be obtained at reasonable cost, must be available to the Company at no cost.
4. The site must be accessible to the Company on a 24 hour-per-day basis, 7 days per week for operating and maintenance purposes, and the Company must be able to limit access to the CHP plant to authorized persons.
5. Reasonably accessible locations must be available within the site for the required equipment, including standard CHP plant packages used by the Company, cooling tower(s) if required, and fuel storage.
6. Customer must be willing and able to pay via a facilities charge for the non-generation equipment needed to utilize the waste heat, or needed to provide a fully integrated system such as chillers, heat exchangers, pumps etc.
7. Appropriate customer-owned and operated electrical equipment, chillers and a back-up heat source must be available for peaking and CHP plant outage coverage if required by customer to maintain their operations.
8. Customer must be up to date on electricity billing and no late payment of bills over past 24 months.
9. Customer must control an existing facility or be able to clearly demonstrate an ability to complete a project under development.
10. Customer must have requisite authority to provide site and enter into the 20-year CHP Agreement.
11. CHP plant installation at the site must be able to comply with interconnection standards in Rule 14H at reasonable cost. Customer must be willing to pay for incremental costs if the customer requires or desires islanding of the CHP unit(s).

MAUI ELECTRIC COMPANY, LIMITED

Transmittal Letter Dated October 10, 2003.

ATTACHMENT I - Continued

12. Customer must be willing and able to comply with the terms and conditions of the CHP Agreement.
13. The Company is not required to serve a customer under this rate schedule if, in the Company's judgment, the lower rates provided would not achieve the rate schedule's intended purpose and would not benefit the Company's customers as a whole. The Customer may be required to provide business operation information that is relevant to establishing its eligibility to receive service under this rate schedule. The Customer shall be responsible for demonstrating the credibility of the business operation information provided.

MAUI ELECTRIC COMPANY, LIMITED

Transmittal Letter Dated October 10, 2003.

**Combined Heat and Power Agreement****Section 1. Parties and Effective Date****1.1 Parties to Agreement:**

This Combined Heat and Power Agreement ("Agreement") is entered into between (i) \_\_\_\_\_ ("Host"), located at \_\_\_\_\_ and (ii) **Maui Electric Company, Ltd.**, ("MECO") located at 210 West Kamehameha Avenue, Kahului, Hawaii 96732-2253. Host and MECO are sometimes referred to hereinafter, respectively, as "Party" and, collectively, as the "Parties."

**1.2 Effective Date:**

This Agreement will be filed with the State of Hawaii Public Utilities Commission ("PUC") upon execution. The Effective Date of this Agreement will be the date when MECO receives a decision and order from the PUC approving the Agreement, electric tariff discount and recovery of waste heat equipment costs through the facility fee and thermal fee, a related fuel supply contract authorizing the full recovery of the CHP Cogeneration System fuel costs and related taxes through MECO's Energy Cost Adjustment Clause.

If MECO has not received such decision and order from the PUC within sixty (60) days of the date of the last signature to this Agreement, then either the Host or MECO may terminate this Agreement by providing written notice of such termination delivered to the other prior to the Effective Date. The "Contract Year" shall be defined as the twelve-month period starting with the first full month following the Effective Date of this Agreement.

**Section 2. Recitals****2.1 Recital 1:**

Host is the owner and operator of \_\_\_\_\_ located at \_\_\_\_\_ ("Facility"). Host desires to purchase from MECO all of its electricity and a portion of its thermal energy in order to provide electrical and thermal service to the Facility, to decrease its energy costs and to improve the reliability of a portion of the Facility.

**2.2 Recital 2:**

MECO desires to offer its customers Combined Heat and Power ("CHP") systems to respond to customer demand and to increase customers' energy alternatives. CHP systems can help reduce a customer's total energy consumption and costs. Use of distributed generation resources such as CHP should benefit MECO by extending the life of its transmission and distribution systems, as well as by the incremental addition of generating capacity created by CHPs.

**2.3 Recital 3:**

MECO desires to design, construct, install, own, maintain, and operate a CHP cogeneration system ("System") at the Facility for the production of electricity and thermal energy.

### **Section 3. MECO Commitments**

#### **3.1 Needs Assessment:**

MECO has conducted an analysis of electricity and fuel use at the Facility to determine the amount of electrical and the amount of thermal energy (derived from waste heat generated from the CHP unit(s)) needed by the Facility.

#### **3.2 Permits and Approvals:**

From the Effective Date, MECO will exercise due diligence to obtain, at its expense, the building permit and fuel supply for the System, as applicable, and all other governmental and non-governmental agencies as are necessary for the installation and operation of the System, as set forth on Schedule 1-A, and to maintain such approvals throughout the term of this Agreement ("Permits"). If all Permits necessary to install the System are not obtained within one (1) year of the Effective Date of this Agreement, then either party may terminate this Agreement on written notice to the other party delivered before such Permits are obtained, and thereafter, the parties will have no further liability or responsibility to the other.

#### **3.3 Design, Construction and Installation of the System:**

MECO will, at its expense, design, construct, install, own, operate and maintain the System at the Facility. A description of the System is attached as Appendix A. MECO and Host have agreed to a preliminary conceptual design of the System. In accordance with the schedule set forth in Schedule 1-A, attached hereto, MECO will provide to Host more detailed System installation plans and specifications. Host and MECO agree to work together to further define the System installation plans and specifications. MECO's right to install and construct the System and Host's obligation to purchase and pay for energy from the System are conditioned upon Host's approval of the final plans and specifications, which approval shall not unreasonably be withheld by Host. MECO will design the System to operate with minimal or no adverse impacts on Host's and Host's customers' or business guests' use of the Facility.

Host acknowledges that MECO's obligation to construct and operate the System is subject to certain construction, financial and other assumptions and contingencies noted herein and in Appendix E, attached. If such assumptions are revealed to be inaccurate, regardless of fault by either party, or such contingencies are not met or satisfied, the parties agree in good faith to attempt to negotiate amendments or modifications to this Agreement to address the changed circumstances due to the inaccurate assumptions or unsatisfied contingencies. If the parties cannot mutually agree upon such amendments or modifications, then either party may terminate the Agreement upon ten (10) days prior written notice to the other and, absent fraud or other tortious conduct by the non-terminating party, each party shall bear its own costs incurred before termination.

To the extent reasonably possible, MECO will perform construction activities to minimize interference with use of the Facility by Host and its customers or business guests. Host acknowledges, however, that construction activities, by their nature, may involve noise and/or dust during Host's regular business hours. MECO will provide and install a sound attenuation cabinet and foundation capable of adequately supporting the operation of the System in accordance with all applicable regulations and codes. Upon completion of construction, and completion of commissioning and break-in periods, MECO will notify Host in writing that Commercial Operation has commenced, and that the System has been constructed in accordance with all permits.

If diesel is the chosen fuel for the site, the Host shall allow MECO, a shared-use of its existing fuel tank(s), if any, for the CHP System's fuel storage at no cost to MECO. The Host shall ensure that

the fuel tanks meet all regulatory requirements and standards. The HOST shall continue to own such existing fuel tanks used by MECO, and MECO will, at its expense, operate and maintain such fuel tanks in accordance with this Agreement. If the Host has no existing fuel tanks or the existing tanks are not acceptable to MECO, MECO will, at its expense, design, construct, install, own, maintain, and operate the fuel tank(s) necessary for the CHP System's fuel storage. The Host shall provide a suitable and adequate site in its premises, acceptable and approved by MECO, for the installation and operation of the MECO's fuel tanks, at no cost to MECO. The Host shall grant MECO a 24-hour access to the site throughout the term of the CHP Agreement.

### **3.4 Maintenance of the System**

MECO will, at its expense, perform all routine and emergency repairs, maintenance, and operation of the System. MECO will provide at its expense, all labor, material, and other supplies necessary to perform such maintenance, repair and operation, including component or System replacement as necessary in MECO's reasonable discretion. In the event of a partial or complete failure of the System, MECO will respond as soon as possible following written or telephone notification from Host, and will effect such repairs as soon as reasonably possible to restore the System. MECO shall perform all maintenance activities so as not to unreasonably interfere with use of the Facility by Host and its customers or business guests. MECO shall design the System to insure that, in the event of any System failure, Host's electric system can automatically access power made available from the MECO grid. Host, at its own expense, shall at all times maintain backup heating and cooling sources sufficient to operate the Facility without the System.

MECO shall comply with all applicable laws with respect to the handling, removal and proper disposal of any Hazardous Substances, as defined by HRS 128D-1, brought onto, or released, spilled or disposed of at the Facility by MECO or its subcontractors. MECO shall not be liable or responsible for any pre-existing Hazardous Substances at the Facility, including the agreed-upon site for the System.

### **3.5 Fuel Purchase for System:**

MECO will, at its expense, purchase the fuel necessary to operate the CHP System. The Host will normally procure its own fuel supply for its back-up thermal energy system for its cooling and/or heating loads. When using the Host's existing fuel tank(s), MECO will, at its expense, install meters to meter the fuel used by the CHP System as well as the fuel used by the Host for its back-up thermal energy system for its cooling or heating. In such circumstances, the Host shall reimburse MECO for the total actual cost of such fuel provided by MECO, including taxes.

### **3.6 Billing and Reporting:**

MECO will furnish to Host monthly statements showing the amount of electrical and thermal energy produced by the System that is consumed by the Facility and the total charges. Cogeneration energy bills will be in a form similar to the example attached as Appendix D. MECO will invoice Host on a monthly basis.

### **3.7 Work Performed:**

MECO will be solely responsible for maintenance, operation and repair work performed on the System by MECO and MECO's agents, contractors and subcontractors. Except to the extent permitted by MECO in writing, neither Host nor its employees, agents or contractors shall perform any such work on the System. MECO will not be responsible for any loss, damage, cost or expense arising out of or resulting from unauthorized work. MECO warrants that it will own the System free of all mechanics' liens.

### **3.8 Compliance with Laws**

MECO, at all times, shall observe and comply with all applicable laws, regulations, governmental rules, orders and ordinances applicable to the performance of its obligations under this Agreement.

## **Section 4. Host Commitments**

### **4.1 Accuracy of Information:**

MECO has relied and is entitled and will continue to rely on the accuracy of all information provided by Host pertaining to the Facility's physical configuration and operations ("Host Provided Information"). If MECO's ability to install, maintain or operate the System as agreed herein and in the final plans and specifications is materially impaired as a result of inaccurate Host Provided Information, regardless of fault on Host's part, then MECO shall be entitled, at its election, to either (1) equitably adjust the thermal energy pricing agreed upon herein to reflect increased maintenance or operation burdens on MECO, (2) equitably adjust schedules and/or other terms of this Agreement affected by the inaccurate Host Provided Information; or (3) terminate the Agreement as provided in section 3.3 above if Host and MECO cannot agree upon such equitable adjustment(s).

### **4.2 Provision of Site:**

A mechanical single line plan for the System based on conceptual design is attached as Appendix A hereto. Host shall provide space acceptable to MECO for installation of the System at the Facility. Such space (the "Site") shall be provided at no cost to MECO for the duration of the term of this Agreement and MECO is hereby granted a license for use and access to the Site as contemplated by this Agreement. If the parties cannot mutually agree upon an acceptable Site for the System or any of its material components within a reasonable time, this Agreement may be terminated by either party upon written notice to the other, and thereafter, the parties will have no further liability or responsibility to the other.

MECO shall not be obligated to accept any Site containing any hazardous substances, hazardous waste or the like as defined by or as may be defined by any applicable federal, state or local law or regulation. MECO shall have the right, but not the obligation, to perform environmental assessments, including surface and subsurface sampling, of the Site.

MECO shall not be liable or responsible for any contamination or hazardous substances existing at the Site prior to MECO's construction and operation of the System at the Site ("pre-existing contamination"). MECO shall provide written notice to Host immediately upon the discovery of any pre-existing contamination. Except in case of emergency, neither MECO nor its subcontractors will disturb, disrupt, remove, alter, dislodge or otherwise handle any pre-existing contamination at the Site without the prior written consent of Host. MECO may suspend work until Host adequately removes or otherwise addresses the pre-existing contamination to MECO's reasonable satisfaction and in a manner acceptable to all governmental or regulatory agencies with jurisdiction over the matter, including the State of Hawaii Department of Health and the United States Environmental Protection Agency. If MECO incurs additional mobilization or demobilization costs as a result, Host shall pay or reimburse MECO for such costs. If the discovery and presence of pre-existing contamination precludes installation of the System, then either party may, on written notice to the other, terminate this Agreement. Upon such termination, Host will reimburse MECO for all reasonable costs incurred prior to termination.

MECO shall insure that the location of the Site for the System will be permissible under all applicable federal, state and local statutes, ordinances and codes.

#### **4.3 Cooperation on Permits and Approvals**

Host shall timely cooperate with MECO's efforts to obtain all permits and approvals required under section 3.2 above or elsewhere in this Agreement, and shall cooperate with all reasonable requests by MECO related thereto.

#### **4.4 Facility Ownership:**

Host warrants that it has the full authority, including necessary consents, if any, from any mortgagees, lien holders, lessors or lessees, to permit MECO to install and operate the System at the Facility for the term of this Agreement and subject to the terms and conditions of this Agreement.

#### **4.5 Access:**

Host will at all times provide safe and reasonable access to the Facility and Site as necessary for MECO to construct, install, operate and maintain the System and its components. Thermal energy and electrical power output will be transmitted from the System, and necessary lines connecting the System with Host's pre-existing conventional electrical and heating/cooling systems will be run in, under, over, across, and through the Facility. Host will compensate MECO for actual costs and expenses incurred (at MECO's then standard rates for MECO's employees or subcontracted maintenance personnel performing work on Systems in the same geographic area) due to any delays or additional work that becomes necessary because of inadequate access to the Facility, Site or work area. MECO shall have the obligation to notify Host if access for such purposes is inadequate. MECO will have the right to suspend work if there is inadequate access until such time as necessary access is provided. In such event, MECO will notify Host of the particular condition or situation affecting access, and when Host corrects the condition or situation, MECO will resume work as soon as practicable. Host will be responsible to MECO for all additional mobilization and demobilization costs associated therewith.

#### **4.6 Maintenance of Facility:**

Host will, at its expense, maintain the Facility and pay all utilities, taxes, and bills associated with the Facility and the Site, excluding the System. Host is fully responsible for the upkeep and maintenance of all of Host's equipment that will utilize the System's outputs, such as, but not limited to, hot water, process heat, space heating, and absorption air conditioning. Host will properly maintain in full working order all of Host's equipment that Host may shut down while utilizing the System, including but not limited to back-up generators, independent air conditioning or heating units and hot water heaters. Host shall also provide a data link.

In the event of damage to the System that is caused by Host or those for whom Host is legally responsible, Host agrees to pay all repair or replacement costs associated with the damage. MECO will have the right to suspend repair work if continuing with the work might jeopardize the safety of any person or property. In such event, MECO will notify Host of the particular condition or situation affecting safety, and when Host corrects the condition or situation, MECO will resume work as soon as practicable. Host will be responsible to MECO for all additional mobilization and demobilization costs associated therewith.

#### **4.7 Alteration of Facility:**

Host will not undertake any alterations or repairs to the Facility that may adversely affect the operation and maintenance of the System (i) without giving at least five (5) working days prior written notice to MECO, setting forth the work to be undertaken (except in the event of emergency repairs, in which event notices may be given by telephone), and (ii) without affording MECO the opportunity to review plans for such work and consult with Host's professionals regarding methods of conducting any such work in a manner likely to reduce or eliminate risks of damage or adverse



effect upon the operation of the System. MECO will have no authority to stop any such work or prevent improvements or alterations to the Facility. MECO will be equitably compensated by Host for any costs proximately arising from substantial changes to the Facility, which adversely impact MECO's ability to operate the System as designed and installed, or cause MECO to make modifications to the System (for example, changes in piping or wiring to accommodate a construction change, addition or removal of an engine or piece of equipment resulting from the change in use or amount of use by the Facility). All advice MECO provides concerning the work to be undertaken shall be subject to the separate independent judgment of Host's professionals, and Host will be responsible for all damages to the System resulting from Host's work. MECO will, at its expense, repair any damage to the Facility resulting from the installation and/or operation of the System, but will have no other responsibility for repair of the Facility, except for repairs that are directly attributable to installation or operation of the System.

#### **4.8 Purchase and Sale of Electrical Power Output and Thermal Energy:**

Host will purchase from MECO the electrical and thermal energy produced by the System and used by the Facility in accordance with the pricing detailed in Appendices B and C hereto. In addition to the unit of usage charges, Host shall pay to MECO a fixed monthly facilities fee to cover the cost of the heat recovery equipment not included in MECO's normal electrical rate structure. Usage of electrical and thermal energy will be metered and measured by comparable means applied to commercial suppliers. MECO will pay for all fuel costs used by the System.

#### **4.9 Minimum Energy Take:**

Host will accept a minimum amount of available cogeneration thermal output of the System not to fall below the BTUs per month according to Appendix C, provided that the System is operable and capable of producing the output necessary to supply the minimum thermal output following the date at which MECO notifies the Host that the System is ready for normal full load operation ("the Minimum energy Take"). If Host closes the Facility to customers or business guests or significantly reduces operations to undergo a renovation or similar event ("Down Period"), then Host may be excused from payment of the Minimum Energy Take for the Down Period so long as (a) the aggregate duration of Down Periods does not exceed six (6) months during the Initial Term of the Agreement or two (2) weeks during any extension of the Agreement term thereafter; and (b) the then-current term of the Agreement is extended by the number of months (or weeks) in which any portion of the Minimum Energy Take is not paid pursuant to this section. Host may purchase from any other party or source thermal energy requirements that exceed the maximum output of the System. Host agrees to purchase all of its electrical requirements from MECO.

#### **4.10 Payment Terms:**

Host will pay MECO's invoices for electrical, thermal energy, and facility fee upon presentment. Any portion of the invoice amount not paid before the next regular bill is calculated will be assessed a late charge of one percent (1%) per month until paid in full.

#### **4.11: Compliance with Laws**

Host, at all times, shall observe and comply with all applicable laws, regulations, governmental rules, orders and ordinances applicable to the performance of its obligations under this Agreement.

### **Section 5. General Terms**

#### **5.1 Ownership of System:**

MECO will at all times own the System and all plans and specifications related to it. MECO may file, record and perfect its security and ownership interest in the System. Host shall cooperate with and execute all documents, including a UCC-1 financing statement, necessary for MECO to do so.

## 5.2 Use of Subcontractors:

MECO will be permitted to use subcontractors to perform its obligations under this Agreement, provided that MECO shall remain obligated to satisfy all of its obligations under this Agreement.

## 5.3 Term of Agreement:

The Initial Term ("Initial Term") of this Agreement will commence on the Effective Date and terminate 20 years after the date on which MECO certifies in writing that the System has achieved commercial operation. After the Initial Term, this Agreement will automatically renew and continue for successive twenty-four (24) month periods ("Extended Terms") unless either party provides written notice of intent not to renew no later than ninety (90) days prior to the end of the Initial Term or any Extended Term, as the case may be. In the event that delays addressed under Section 4 above are caused by Host during the Initial Term, then MECO may elect to extend the Initial Term by the amount of accumulated time related to the delays.

At the end of the Term of this Agreement, (1) MECO shall retain ownership of the System and shall have the right to use the System for any purpose, including projects unrelated to Host, and (2) MECO shall remove the skid mounted system from the site at its cost, the fuel supplier will remove their tanks at their cost, and Host shall be responsible for the costs to remove the remaining elements of the System from the Facility.

## 5.4 Termination:

### A. Host's Rights:

Host may terminate this Agreement upon MECO's material breach hereunder if, after written notice to MECO of the alleged breach and Host's demand to cure such breach, (a) MECO has not, within thirty (30) days of such notice, cured the breach or begun and diligently pursued efforts reasonably calculated to cure the breach in a reasonable time, or (b) MECO has not cured the breach within one-hundred-twenty (120) days of such notice despite its reasonable efforts to do so. Upon such termination, MECO will, at its expense, promptly remove the System, which will be limited to removal of the cogenerator and attached related equipment. The foundation pad and all piping need not be removed, but any piping remaining will be capped. Except as limited in this Agreement, Host may pursue all other legal and equitable remedies available to it arising from such breach.

In addition, after installation of the System, if Host demonstrates to MECO's satisfaction that the total CHP energy costs (electric, thermal and facilities) for any 120 day period exceed the energy costs that Host would incur for the same period for equivalent operations if Host used Host-owned chillers and/or paid for electrical energy directly from the MECO grid pursuant to the applicable MECO (non-CHP schedule) tariff rate, then Host may terminate the Agreement upon thirty (30) days written notice and pay MECO for all recorded project development and construction costs, including AFUDC, MECO has incurred prior to the termination date and all other costs that cannot reasonably be avoided immediately thereafter. Conditioned upon payment of such costs by Host, Host will be offered the opportunity to purchase the System from MECO *as is, where is, without warranty*, at a negotiated price to be approved by the PUC and subject to a new or revised agreement discussed below. Alternatively, or if a negotiated price and contract cannot be mutually agreed upon, MECO will, at Host's sole cost, remove the System from the Facility. In such circumstance, MECO may utilize the System or any part of it as it sees fit. If Host purchases and retains the System or any

major component of the System, it will enter into a new or revised agreement with MECO reflecting the changed circumstances. In addition, Host shall pay MECO a termination charge equal to the total value of the discount provided through the electricity discount in the CHP tariff for the six (6) months preceding the termination date.

**B. MECO's Rights:**

MECO may terminate this Agreement upon Host's failure to make payment as provided in Section 4.10 (Payment Terms) of this Agreement after no less than three (3) business days written notice and demand by MECO that such payment be made. Upon such termination, MECO may, at Host's sole cost, remove the System, which will be limited to removal of the cogenerator and attached related equipment. The foundation pad and all piping need not be removed, but any piping remaining will be capped. Except as limited in this Agreement, MECO may pursue all other legal and equitable remedies available to it arising from such breach.

MECO may also terminate this Agreement upon Host's material breach hereunder if, after written notice to Host of the alleged breach and MECO's demand to cure such breach, (a) Host has not, within thirty (30) days of such notice, cured the breach or begun and diligently pursued efforts reasonably calculated to cure the breach in a reasonable time, or (b) Host has not cured the breach within one-hundred-twenty (120) days of such notice despite its reasonable efforts to do so. Except as limited in this Agreement, MECO may pursue all other legal and equitable remedies available to it arising from such breach. Upon such termination, MECO will, at Host's sole expense, remove the System, which will be limited to removal of the cogenerator and attached related equipment. The foundation pad and all piping need not be removed, but any piping remaining will be capped. Except as limited in this Agreement, MECO may pursue all other legal and equitable remedies available to it arising from such breach. In addition, at any time during the term of this Agreement, including prior to construction of the Facility, if MECO determines, in its reasonable discretion, that the economic viability of the project is materially impaired, MECO may cease operations and terminate this Agreement without cost or liability to MECO other than removal of the System. In such event, if the System has been installed, MECO will offer Host the opportunity to purchase the System, *as is, where is, without warranty*, at a negotiated cost to be approved by the Commission. If Host does not purchase the System, MECO shall be responsible, at its own cost, for removing the System, which will be limited to removal of the cogenerator and attached related equipment. The foundation pad and all piping need not be removed but any piping remaining will be capped.

MECO may also terminate this Agreement if Host uses electricity not supplied by MECO (other than energy from a non-fossil source or from the Host's own emergency generator when operated during emergency periods, or for limited test periods, or at MECO's request) during the term of this Agreement.

**5.5 Indemnification:**

MECO shall defend and indemnify Host, its officers, directors, agents and employees against all claims, liabilities, damages, penalties, costs and expenses (including reasonable attorneys' fees) arising from property damage and/or personal injury (including wrongful death) to the extent and only to the extent caused by MECO's (including its employees, agents and contractors) negligent, willful or tortious acts or omissions in performing its obligations under this Agreement.

Host shall defend and indemnify MECO, its officers, directors, agents and employees against all claims, liabilities, damages, penalties, costs and expenses (including reasonable attorneys' fees) arising from property damage and/or personal injury (including wrongful death) to the extent and only to the extent caused by Host's (including its employees, agents and contractors) negligent,

willful or tortious acts or omissions in performing its obligations under this Agreement.

The parties' respective defense and indemnification obligations will survive the expiration or termination of this Agreement for the period set forth in any applicable statute of limitation. Such indemnification will not be limited to the extent of insurance coverage.

#### **5.6 Limitations of Liability:**

Except as expressly stated herein, neither party, nor its employees, agents, contractors, subcontractors or suppliers, shall be liable to the other for any punitive, exemplary, indirect, special, incidental or consequential loss or damages, including but not limited to, lost profit, of any nature whatsoever, arising out of their performance or non-performance hereunder.

Except for defense and indemnification obligations required under Section 5.5 above, MECO's aggregate liability under this Agreement arising out of or in connection with the performance or non-performance of this Agreement or any part thereof shall not exceed one year of estimated annual energy savings from the System.

The limitations in this Section shall survive termination of this Agreement and shall apply whether such claims or liabilities arise or are alleged in contract, tort (including negligence), strict liability or otherwise.

#### **5.7 Assignment:**

This Agreement may not be assigned in whole or in part without the written consent of the other party, which consent may not be unreasonably withheld or delayed, except that Host may assign the Agreement without MECO's consent to any party acquiring the Facility, provided that such assignment is on notice to MECO, the assignee agrees to be bound hereby and the assignee has a net worth in excess of assignor. Notwithstanding the foregoing, MECO may assign, mortgage, pledge, or otherwise transfer its interests in this Agreement and/or the System to (i) any lender, providing financing for the System or (ii) an affiliate of MECO as long as such affiliate is comparable in terms of its financial situation and its technical ability to perform the Agreement, in either case without obtaining the consent of Host. Such assignees shall be bound by all of MECO's obligations under the Agreement.

#### **5.8 Governing Law:**

This Agreement will be governed, interpreted, and enforced in accordance with the laws of the State of Hawaii, other than the laws thereof that would require reference to the laws of any other jurisdiction.

#### **5.9 No Third Party Beneficiaries:**

Host and MECO do not intend to benefit any person or entity not a signatory to this Agreement. No third party beneficiaries are intended or will be created by operation of this Agreement.

#### **5.10 Binding Effect:**

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, legal representatives, and permitted assigns.

## 5.11 Insurance:

5.11.1 Coverage by MECO. During the term of the Agreement, MECO will adequately self-insure through its parent Hawaiian Electric Industries, Inc. or maintain at its sole cost and expense the following insurance coverage:

(a) Commercial General Liability Insurance against claims of third parties for personal injury and property damage arising from MECO's maintenance of the System, in an amount of not less than Five Million Dollars (\$5,000,000) per occurrence/annual aggregate, and Property Insurance on an all-risk form covering all owned and non-owned assets (including leased, rented or borrowed) MECO may use in the performance of this agreement, including a waiver of subrogation from the insurer in favor of the Additional Insureds.

(b) Workers' Compensation Insurance to provide statutory workers compensation benefits, as required by the laws of the state of Hawaii and, Employers' Liability Insurance with a limit of not less than One Hundred Thousand Dollars (\$100,000) for each employee; and

(c) Business Automobile Insurance against claims for personal injury and property damage in an amount of not less than One Million Dollars (\$1,000,000) per occurrence.

(d) MECO will provide Host with a certificate containing evidence of such coverage prior to commencing any work hereunder with respect to the applicable System and thereafter will provide Host with appropriate evidence of such coverage upon each anniversary date of the policy.

5.11.2 Coverage by Host. During the term of the Agreement, Host will adequately maintain at its sole cost and expense the following insurance coverage:

(a) Commercial General Liability Insurance against the risks of personal injury and property damage occurring on, in or about the Facility, or arising from Host's operation of the System, in an amount of not less than One Million Dollars (\$1,000,000) per occurrence, Two Million Dollars (\$2,000,000) annual aggregate, and Property Insurance on an all-risk form (?) covering replacement value of the Facility.

(b) Workers' Compensation Insurance to provide statutory workers compensation benefits, as required by the laws of the state of Hawaii and: (i) Employers' Liability Insurance with a limit of not less than One Hundred Thousand Dollars (\$100,000) for each employee; and

(c) Business Automobile Insurance against claims for personal injury and property damage in an amount of not less than One Million Dollars (\$1,000,000) per occurrence.

(d) Host will provide MECO with a certificate containing evidence of such coverage prior to MECO commencing any work hereunder with respect to the applicable System and thereafter will provide MECO with appropriate evidence of such coverage upon each anniversary date of the policy.

5.11.3 Insurance Policies. All insurance policies required under this Section 11 will be issued by insurers of recognized responsibility. The policy of insurance for Commercial General Liability Insurance will name the other party as an additional insured and will contain an agreement by the insurer that such policy will not be terminated, canceled or materially reduced in coverage without at least thirty (30) days prior written notice to the additional insured; provided such notice will be ten (10) days in the case of a failure to pay premiums.

#### **5.12 Notices:**

Notices will be given by (i) certified mail, return receipt requested, postage paid, or (ii) delivery services such as Federal Express or similar service, or (ii) by facsimile. Notices not given by mail will be effective upon actual receipt by the party to whom the notice is directed. Notices will be addressed as per Appendix F

#### **5.13 Integration and Modification:**

This Agreement shall constitute the entire understanding between the parties, superseding any and all previous understandings, oral or written, pertaining to the subject matter contained herein. The parties have entered into this Agreement in reliance upon the representations and mutual undertakings contained herein and not in reliance upon any oral or written representation or information provided to one party by any representative of the other party. Neither party shall claim at any time that it entered into this Agreement in whole or in part based on any representation not stated in this Agreement. This Agreement may be amended or supplemented by and only by written instrument duly executed by each of the parties.

#### **5.14 PUC Authority:**

If the PUC orders changes or modifications to this Agreement, then the Agreement shall be amended as ordered, provided that, to the extent possible, the Agreement shall be amended to preserve the economic and operational arrangements between the parties as set forth in this Agreement. If it is not possible to maintain the economic and operational arrangements, and if the changes or modifications would result in material adverse impacts on the Host's or MECO's rights, obligations or benefits under this Agreement, then the Host or MECO, as the case may be, may terminate this Agreement by providing written notice to the other within thirty (30) days of receiving written notice of the order from MECO.

**5.15 Reservation of Rights:** Nothing in this Agreement shall limit MECO's ability to exercise its rights or expand or diminish its liability with respect to the provision of electrical service pursuant to MECO's Tariff as filed with the PUC or the PUC's Standards for Electric Utility Service in the State of Hawaii, which currently are included in the PUC's General Order Number 7, as either may be amended from time to time.

#### **5.16 Waiver:**

The failure of any party to enforce any provision of this Agreement will not be construed to be a waiver of the provision, or affect the validity of this Agreement or the right of any party to enforce any provision. The waiver of any breach of this Agreement will not be held to constitute a waiver of any other breach.

#### **5.17 Nondisclosure of Confidential Information:**

Information provided to MECO relating to Host's non-utility generation alternative and its business operation, and designated in writing by Host as being confidential, shall be treated as confidential. MECO may disclose such information to the PUC and the Consumer Advocate, subject to PUC issuance of a protective order. The electric rate discount provided to Host shall not be considered to be confidential.

#### **5.18 Force Majeure:**

For purposes of this Agreement, "Force Majeure Event" means any event: (a) that is beyond the

reasonable control of the affected party; and (b) that the affected party is unable to prevent or provide against by exercising reasonable diligence, including the following events or circumstances, but only to the extent they satisfy the preceding requirements: acts of war, public disorder, insurrection or rebellion; floods, hurricanes, earthquakes, lightning, storms, and other natural calamities; explosions or fires; strikes, work stoppages, or labor disputes; embargoes; and sabotage. If a Force Majeure Event prevents a party from fulfilling any obligations under this Agreement, such party will promptly notify the other party in writing, and will keep the other party informed on a continuing basis of the scope and duration of the Force Majeure Event. The affected party will specify in reasonable detail the circumstances of the Force Majeure Event, its expected duration, and the steps that the affected party is taking to mitigate the effects of the event on its performance. The affected party will be entitled to suspend or modify its performance of obligations under this Agreement, other than the obligation to make payments then due or becoming due under this Agreement, but only to the extent that the effect of the Force Majeure Event cannot be mitigated by the use of reasonable efforts. The affected party will use reasonable efforts to resume its performance as soon as possible.

**5.19 Representations:**

MECO and Host each represents and warrants respectively that: (a) It has all necessary right, power and authority to execute, deliver and perform this Agreement; and (b) The execution, delivery and performance of this Agreement by it will not result in a violation of any law or regulation of any governmental authority, or conflict with, or result in a breach of, or cause a default under, any agreement or instrument to which such party is also a party or by which it is bound.

**5.20 Attorneys' Fees and Costs**

The prevailing party in any action, arbitration or proceeding to enforce the provisions of this Agreement shall be entitled to recover its reasonable attorneys' fees and costs incurred therein.

**5.21 Effect of Headings:**

The headings or titles of the several sections and exhibits hereof are for convenience of reference and shall not affect the construction or interpretation of any provision of this Agreement.

**5.22 Relationship of Parties:**

Nothing in this Agreement shall be deemed to constitute any party hereto as partner, agent or representative of the other party or to create any fiduciary relationship between the parties.

**5.23 Multiple Counterparts:**

This Agreement may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have set their hand the day and year first above written.

**Maui Electric Company, Ltd.**

By: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_  
(Print Name)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_  
(Print Name)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_  
(Print Name)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Appendices:**

Appendix A - Description of the System

Schedule 1-A - Permitting and Anticipated Schedule

Appendix B – Electricity Pricing

Appendix C – Thermal Energy Pricing

Appendix D - Example Monthly Cogeneration Energy Bill

Appendix E - Contingencies

Appendix F – Contact Information



## Appendix A

### Description of \_\_\_\_\_ System

The CHP System designed for \_\_\_\_\_ was a balance of Facility electrical baseload, chilled water requirements, absorption chiller equipment sizes, and reliability. While the Facility may operate continuously for many weeks the following \_\_\_\_\_ profile provided the basis for the control system design for the CHP System.

The \_\_\_\_\_ CHP System consists of the following major components:

- \_\_\_ HESS size CG Module: continuous duty, \_\_\_-fired \_\_\_kW distributed cogeneration reciprocating engine, synchronous generator, heat recovery equipment, integrated protective and interconnecting switchgear, onboard microprocessor control system, synchronizing system, and weatherproof, sound-attenuated cabinet with cabinet mounted mufflers.
- \_\_\_ size-ton absorption chiller will be located \_\_\_\_\_
- \_\_\_ size-ton cooling towers will be located \_\_\_\_\_
- The balance of plant equipment will include a size-ton intercooler chiller, pumps, control valves, fill and expansion tanks, with associated piping and electrical equipment.

If requested by Host and MECO determines that it is feasible and can be provided at a reasonable cost, Host-sited CHP System islanding capability (i.e., the ability to automatically remain in service isolated from the MECO grid) may be provided by MECO as indicated below, provided that compliance with interconnections standards in MECO tariff Rule 14H shall be met and maintained. Standard CHP Systems do not have islanding capability.

- ☐ If this box is checked, the CHP System is equipped with islanding capability. Host agrees to make a non-refundable contribution of \$\_\_\_\_\_ to cover the incremental cost incurred by MECO to provide the islanding capability, and such non-refundable contribution shall be payable upon CHP System installation and startup.

#### Work by Others

\_\_\_\_\_ fuel storage tank(s) to be used for the fuel supply will be installed by \_\_\_\_\_

The following figure is a one-line diagram of the conceptual design of the System. The \_\_\_ size kW cogen units have a thermal output capability of \_\_\_ therms/hr at full load. However, the \_\_\_ cogen units will be operated at approximately \_\_\_ kW each to allow the thermal output to match the size-ton chiller capacity having a thermal requirement of approximately \_\_\_ therms/hr.

The Net Capacity of the CHP system generating units is defined as the Hess CG Module nameplate rating minus the intercooler chiller load.

#### SCHEDULE 1-A

## **Appendix B**

### **Electric Energy Charges and Billing**

The electric energy supplied by MECO to Host will be billed under the applicable rate schedule (i.e., Schedule J or Schedule PS), and all its provisions shall apply except as modified below:

#### **Electric Energy Rate Discount:**

The customer's total monthly bill under the applicable rate schedule shall be reduced by the following rate adjustment applied to the total kWh produced by the CHP System and used by the Host's Facility:

All kWh from CHP System - 1.0 ¢/kWh

MECO shall install a meter on the CHP System to measure the total monthly kWh supplied by the System to which the above energy rate adjustment shall apply.

Host will receive an annual cumulative electricity discount credit at a guaranteed minimum level based upon an assumed CHP System annual equivalent availability rate of 85%. The guaranteed minimum discount per Contract Year will be equal to the following:

$$\text{Minimum Discount} = [(A \times 85\%) \times (8760 - B)] \times C$$

Where:

A = the net capacity of the CHP System generating units in KW specified in Appendix A;

B = number of hours during the year in which the customer does not take at least 75% of the available CHP System electric output;

C = the energy rate discount in ¢/kWh noted above;

If the Host's total actual electricity discount for any Contract Year (as shown on MECO's bills to Host) does not equal the Minimum Discount for that Contract Year as calculated above, then Host will be credited with the difference on the billing for the first period in the following year.

## Appendix C

### Thermal Energy Pricing

Thermal Charge – of \_\_\_\_ ¢/therm to be added to customer's monthly bill:

The customer is subject to a minimum monthly thermal energy charge based on the Thermal Energy Minimum Take of \_\_\_\_\_ therms per month described below.

The Thermal Charge shall be adjusted on June 30 each year based on the percentage change from the previous year's Gross Domestic Product Implicit Price Deflator ("GDPIPD"). The percentage change in GDPIPD will be measured from a base of 110.66 for the year 2002 to the reported value for the year in which the adjustment is made.

If the GDPIPD index is discontinued or revised during the term of this Agreement, then another government index or computation by which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the GDPIPD index has not been discontinued or revised.

#### Thermal Energy Minimum Take:

The thermal energy monthly minimum take is based on a \_\_\_\_-day a week, 24-hour day, 4 week month, resulting in a total \_\_\_\_ hours of operation. A 85% thermal load of \_\_\_\_ therms per hour times \_\_\_\_ hours of operation results in the calculated minimum take level of \_\_\_\_ therms per month.

**Appendix D**

**Example Monthly Cogeneration Energy Bill**

**Appendix D (continued)**  
**Example Monthly Cogeneration Energy Bill**

## **Appendix E**

### **Contingencies**

This Agreement is predicated upon the assumption that the Host clearly meets all of the criteria established in MECO's CHP Tariff for eligibility. If in the final project implementation, it is discovered that any of those criteria are not met, MECO has the option to either discontinue the project in accordance with the terms of this Agreement or renegotiate the Thermal Rate to reach an equitable going forward rate.

The following assumptions are key elements of the basic elements of the basic pricing for the CHP Systems:

1. The project can be completed using standard components available from Hess Microgen – i.e. no “one off” components are required.
2. All components may be skid mounted or located within reasonable proximity in a readily accessible area with no major reconstruction required for access.
3. Construction can be completed utilizing cranes and other equipment available on the island where the system is to be located.
4. Piping and electrical runs to interconnect with existing systems are less than 250 feet in length.
5. Air emissions permits do not require additional emissions controls beyond those currently commercial available from Hess Microgen.

If the system does not comply with any of the noted assumptions, the thermal pricing will take such a variance into consideration.

**Appendix F**

Contact Information for Notices

Host Designated Contact:

MECO Designated Contact: